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YEROUSHALMI

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 DEPT # 49  
 (HON. DEIRDRE HILL) **FILED**  
 Los Angeles Superior Court

AUG 08 2016

Sherril R. Carter, Executive Officer/Clerk  
 By [Signature] HANNNY  
 ДАВНА АЛЕКСАНДРОВ

6 Attorneys for Plaintiff,  
 7 Consumer Advocacy Group, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,  
 13 in the public interest,

CASE NO. **BC 628491**

14 Plaintiff,

COMPLAINT FOR PENALTY AND  
INJUNCTION

15 v.

Violation of Proposition 65, the Safe  
 Drinking Water and Toxic Enforcement  
 Act of 1986 (*Health & Safety Code*, §  
 25249.5, *et seq.*)

16 SHUN FAT SUPERMARKET, INC., a  
 17 California Corporation; SF  
 18 SUPERMARKET, INC., a California  
 Corporation; TRANS FAMILY, INC., a  
 19 California Corporation; TRAN'S GROUP,  
 INC., a California Corporation; JAYONE  
 20 FOODS, INC., a California Corporation;  
 21 SAN GABRIEL SUPERSTORE, a business  
 entity form unknown and DOES 1-20;

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

22 Defendants.

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
 25 Defendants SHUN FAT SUPERMARKET, INC., SF SUPERMARKET, INC., TRANS  
 26 FAMILY, INC., TRAN'S GROUP, INC., JAYONE FOODS, INC., SAN GABRIEL  
 27 SUPERSTORE and DOES 1-20 as follows:  
 28 ///

RECEIPT #: LCH481620056  
 DATE PAID: 08/08/16 04:03 PM  
 PAYMENT: \$435.00  
 RECEIVED: 310  
 CHECK: \$0.00  
 CASH: \$0.00  
 CHANGE: \$0.00  
 CARD: \$435.00

CIT/CASE: BC628491  
 LEA/DEF#:

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant SHUN FAT SUPERMARKET, INC., is a California Corporation, doing business in the State of California at all relevant times herein.
3. Defendant SF SUPERMARKET, INC., is a California Corporation, doing business in the State of California at all relevant times herein.
4. Defendant TRANS FAMILY, INC., is a California Corporation, doing business in the State of California at all relevant times herein.
5. Defendant TRAN’S GROUP, INC., is a California Corporation, doing business in the State of California at all relevant times herein.
6. Defendant JAYONE FOODS, INC., is a California Corporation, doing business in the State of California at all relevant times herein.
7. Defendant SAN GABRIEL SUPERSTORE is a business entity form unknown doing business in the State of California at all relevant times herein.
8. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
9. At all times mentioned herein, the term “Defendant” includes SHUN FAT SUPERMARKET, INC., SF SUPERMARKET, INC., TRANS FAMILY, INC., TRAN’S GROUP, INC., JAYONE FOODS, INC., SAN GABRIEL SUPERSTORE and DOES 1-20.

1 10. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
2 times mentioned herein have conducted business within the State of California.

3 11. Upon information and belief, at all times relevant to this action, each of the Defendants,  
4 including DOES 1-20, was an agent, servant, or employee of each of the other  
5 Defendants. In conducting the activities alleged in this Complaint, each of the  
6 Defendants was acting within the course and scope of this agency, service, or  
7 employment, and was acting with the consent, permission, and authorization of each of  
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
9 were ratified and approved by every other Defendant or their officers or managing  
10 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
11 the alleged wrongful conduct of each of the other Defendants.

12 12. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
13 Defendants was a person doing business within the meaning of Health and Safety Code  
14 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
15 employees at all relevant times.

### 16 **JURISDICTION**

17 13. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
19 those given by statute to other trial courts. This Court has jurisdiction over this action  
20 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
21 violations of Proposition 65 in any Court of competent jurisdiction.

22 14. This Court has jurisdiction over Defendants named herein because Defendants either  
23 reside or are located in this State or are foreign corporations authorized to do business in  
24 California, are registered with the California Secretary of State, or who do sufficient  
25 business in California, have sufficient minimum contacts with California, or otherwise  
26 intentionally avail themselves of the markets within California through their  
27 manufacture, distribution, promotion, marketing, or sale of their products within  
28

1 California to render the exercise of jurisdiction by the California courts permissible  
2 under traditional notions of fair play and substantial justice.

3 15. Venue is proper in the County of Los Angeles because one or more of the instances of  
4 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
5 because Defendants conducted, and continue to conduct, business in the County of Los  
6 Angeles with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

8 16. In 1986, California voters approved an initiative to address growing concerns about  
9 exposure to toxic chemicals and declared their right “[t]o be informed about exposures  
10 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
11 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
12 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
13 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
14 from contamination, to allow consumers to make informed choices about the products  
15 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
16 fit.

17 17. Proposition 65 requires the Governor of California to publish a list of chemicals known  
18 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
19 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains  
20 over 700 chemicals and chemical families. Proposition 65 imposes warning  
21 requirements and other controls that apply to Proposition 65-listed chemicals.

22 18. All businesses with ten (10) or more employees that operate or sell products in  
23 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
24 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of  
25 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
26 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
27 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

1 19. Proposition 65 provides that any person "violating or threatening to violate" the statute  
2 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
3 25249.7. "Threaten to violate" means "to create a condition in which there is a  
4 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
5 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
6 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

7 20. Plaintiff identified certain practices of manufacturers and distributors of products  
8 bearing Lead and Lead Compounds ("LEAD"), exposing, knowingly and intentionally,  
9 persons in California to said Proposition 65-listed chemical without first providing clear  
10 and reasonable warnings to the exposed persons prior to the time of exposure. Plaintiff  
11 later discerned that Defendants engaged in such practice.

12 21. On February 27, 1987 the Governor of California added Lead to the list of chemicals  
13 known to the State to cause developmental and reproductive toxicity, and on October 1,  
14 1992, the Governor added Lead and Lead Compounds to the list of chemicals known to  
15 the State to cause cancer. Pursuant to Health and Safety Code sections 25249.9 and  
16 25249.10, twenty (20) months after addition of LEAD to the list of chemicals known to  
17 the State to cause cancer and reproductive toxicity, LEAD became fully subject to  
18 Proposition 65 warning requirements and discharge prohibitions.

19 **SATISFACTION OF PRIOR NOTICE**

20 22. On or about January 11, 2016, Plaintiff gave notice of alleged violations of Health and  
21 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
22 private action to SHUN FAT SUPERMARKET, INC., SF SUPERMARKET, INC. and  
23 to the California Attorney General, County District Attorneys, and City Attorneys for  
24 each city containing a population of at least 750,000 people in whose jurisdictions the  
25 violations allegedly occurred, concerning WASABI FLAVOR SEAWEED containing  
26 LEAD.

27 23. On or about April 12, 2016, Plaintiff gave notice of alleged violations of Health and  
28 Safety Code section 25249.6, concerning consumer products exposures, subject to a



1 private action to SHUN FAT SUPERMARKET, INC., TRANS FAMILY, INC.,  
2 TRAN'S GRUP, INC., JAYONE FOODS, INC., SAN GABRIEL SUPERSTORE and  
3 to the California Attorney General, County District Attorneys, and City Attorneys for  
4 each city containing a population of at least 750,000 people in whose jurisdictions the  
5 violations allegedly occurred, concerning ROASTED SEAWEEED containing LEAD.

6 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
7 products involved, the likelihood that such products would cause users to suffer  
8 significant exposures to LEAD, and the corporate structure of each of the Defendants.

9 25. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
10 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
11 for Plaintiff who executed the certificate had consulted with at least one person with  
12 relevant and appropriate expertise who reviewed data regarding the exposures to LEAD,  
13 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
14 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
15 reasonable and meritorious case for this private action. The attorney for Plaintiff  
16 attached to the Certificate of Merit served on the Attorney General the confidential  
17 factual information sufficient to establish the basis of the Certificate of Merit.

18 26. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
19 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
20 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

21 27. Plaintiff is commencing this action more than sixty (60) days from the dates that  
22 Plaintiff gave notices of the alleged violation to SHUN FAT SUPERMARKET, INC.,  
23 SF SUPERMARKET, INC., TRANS FAMILY, INC., TRAN'S GROUP, INC.,  
24 JAYONE FOODS, INC., SAN GABRIEL SUPERSTORE, and the public prosecutors  
25 referenced in Paragraphs 22 through 23.

26 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
27 any applicable district attorney or city attorney has commenced and is diligently  
28 prosecuting an action against the Defendants.

1  
2  
3 **FIRST CAUSE OF ACTION**

4 **(By CONSUMER ADVOCACY GROUP, INC. and against SHUN FAT SUPERMARKET,**  
5 **INC., SF SUPERMARKET, INC. and DOES 1-20 for Violations of Proposition 65, The**  
6 **Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**  
7 **25249.5, et seq.))**

8 **Wasabi Flavor Seaweed**

9 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
10 reference paragraphs 1 through 28 of this complaint as though fully set forth herein.  
11 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
12 distributor, promoter, or retailer of Wasabi Flavor Seaweed, which includes but is not  
13 limited to, ““FOUR SEAS SEAWEED Wasabi Flavour”; Net Weight: 1.32oz (37.5G);  
14 ‘FSC00521’ Four Seas Mercantile Limited; Four Seas Group Building, No.1 Hong  
15 Kong Ting Road, Sai Kung, Hong Kong; Serving Size-5 Pieces; Servings Per Container  
16 10; UPC: 8 888339 005215” (“WASABI FLAVOR SEAWEED”)

17 30. WASABI FLAVOR SEAWEED contains LEAD.

18 31. Defendants knew or should have known that LEAD has been identified by the State of  
19 California as a chemical known to cause cancer and reproductive toxicity and therefore  
20 was subject to Proposition 65 warning requirements. Defendants were also informed of  
21 the presence of LEAD in WASABI FLAVOR SEAWEED within Plaintiff's notice of  
22 alleged violations further discussed above at Paragraph 22.

23 32. Plaintiff's allegations regarding WASABI FLAVOR SEAWEED concerns “[c]onsumer  
24 products exposure[s],” which “is an exposure that results from a person's acquisition,  
25 purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
26 good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.*  
27 tit. 27, § 25602(b). WASABI FLAVOD SEAWEED is a consumer product, and, as  
28 mentioned herein, exposures to LEAD took place as a result of such normal and  
foreseeable use.

1 33. Plaintiff is informed, believes, and thereon alleges that between January 11, 2013 and  
2 the present, each of the Defendants knowingly and intentionally exposed California  
3 consumers of WASABI FLAVOR SEAWEED, which Defendants manufactured,  
4 distributed, or sold as mentioned above, to LEAD without first providing any type of  
5 clear and reasonable warning of such to the exposed persons before the time of  
6 exposure. Defendants have distributed and sold WASABI FLAVOR SEAWEED in  
7 California. Defendants know and intend that California consumers will use and  
8 consume WASABI FLAVOR SEAWEED thereby exposing them to LEAD.  
9 Defendants thereby violated Proposition 65.

10 34. The principal routes of exposure were through ingestion, including direct (oral), hand to  
11 mouth pathways, inhalation and trans-dermal absorption. Persons sustained exposures  
12 by eating and consuming WASABI FLAVOR SEAWEED, handling WASABI  
13 FLAVOR SEAWEED without wearing gloves or by touching bare skin or mucus  
14 membranes with gloves after handling WASABI FLAVOR SEAWEED, or through  
15 direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food  
16 then to mouth, hand to mucous membrane, or breathing in particulate matter emanating  
17 from WASABI FLAVOR SEAWEED, as well as through environmental mediums that  
18 carry the LEAD once contained within the WASABI FLAVOR SEAWEED.

19 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
20 Proposition 65 as to WASABI FLAVOR SEAWEED have been ongoing and continuous  
21 to the date of the signing of this complaint, as Defendants engaged and continue to  
22 engage in conduct which violates Health and Safety Code section 25249.6, including the  
23 manufacture, distribution, promotion, and sale of WASABI FLAVOR SEAWEED, so  
24 that a separate and distinct violation of Proposition 65 occurred each and every time a  
25 person was exposed to LEAD by WASABI FLAVOR SEAWEED as mentioned herein.

26 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
27 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
28 violations alleged herein will continue to occur into the future.



1 37. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to LEAD from WASABI FLAVOR  
3 SEAWEED, pursuant to Health and Safety Code section 25249.7(b).

4 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

6  
7 **SECOND CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against SHUN FAT SUPERMARKET, INC., TRANS FAMILY, INC., TRAN'S GROUP, INC., JAYONE FOODS, INC., SAN GABRIEL SUPERSTORE and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

9  
10 **Roasted Seaweed**

11  
12 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
13 reference paragraphs 1 through 38 of this complaint as though fully set forth herein.

14 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of Roasted Seaweed, which includes but is not limited  
16 to, "'Jayone' 'Premium Seaweed Winter Harvest' 'Seasoned & Roasted Seaweed'; NET  
17 WT. 0.7oz (20g); Freshness Guaranteed; Product of Korea; Imported by Jayone Foods,  
18 Inc.; UPC: 6 78108 17111 5'" ("SEAWEED")

19 40. ROASTED SEAWEED contains LEAD.

20 41. Defendants knew or should have known that LEAD has been identified by the State of  
21 California as a chemical known to cause cancer and reproductive toxicity and therefore  
22 was subject to Proposition 65 warning requirements. Defendants were also informed of  
23 the presence of LEAD in ROASTED SEAWEED within Plaintiff's notice of alleged  
24 violations further discussed above at Paragraph 23.

25 42. Plaintiff's allegations regarding ROASTED SEAWEED concerns "[c]onsumer products  
26 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
27 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
28 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*

1 25602(b). ROASTED SEAWEED is a consumer product, and, as mentioned herein,  
2 exposures to LEAD took place as a result of such normal and foreseeable use.

3 43. Plaintiff is informed, believes, and thereon alleges that between April 12, 2013 and the  
4 present, each of the Defendants knowingly and intentionally exposed California  
5 consumers of ROASTED SEAWEED, which Defendants manufactured, distributed, or  
6 sold as mentioned above, to LEAD without first providing any type of clear and  
7 reasonable warning of such to the exposed persons before the time of exposure.  
8 Defendants have distributed and sold ROASTED SEAWEED in California. Defendants  
9 know and intend that California consumers will use and consume ROASTED  
10 SEAWEED, thereby exposing them to LEAD. Defendants thereby violated Proposition  
11 65.

12 44. The principal routes of exposure were through ingestion, including direct (oral), hand to  
13 mouth pathways, inhalation, and trans-dermal absorption. Persons sustained exposures  
14 by eating and consuming ROASTED SEAWEED, handling ROASTED SEAWEED  
15 without wearing gloves or by touching bare skin or mucus membranes with gloves after  
16 handling ROASTED SEAWEED, or through direct and indirect hand to mouth contact,  
17 hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane,  
18 or breathing in particulate matter emanating from ROASTED SEAWEED, as well as  
19 through environmental mediums that carry the LEAD once contained within the  
20 ROASTED SEAWEED.

21 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
22 Proposition 65 as to ROASTED SEAWEED have been ongoing and continuous to the  
23 date of the signing of this complaint, as Defendants engaged and continue to engage in  
24 conduct which violates Health and Safety Code section 25249.6, including the  
25 manufacture, distribution, promotion, and sale of ROASTED SEAWEED, so that a  
26 separate and distinct violation of Proposition 65 occurred each and every time a person  
27 was exposed to LEAD by ROASTED SEAWEED as mentioned herein.

1 46. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur into the future.

4 47. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to LEAD from ROASTED SEAWEED,  
6 pursuant to Health and Safety Code section 25249.7(b).

7 48. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

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12 ///

13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

- 15 1. A permanent injunction mandating Proposition 65-compliant warnings;  
16 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
17 3. Costs of suit;  
18 4. Reasonable attorney fees and costs; and  
19 5. Any further relief that the court may deem just and equitable.

20  
21  
22 Dated: August 5, 2016,

YEROUSHALMI & YEROUSHALMI

23  
24  
25 BY: 

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.