

1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
3 Peter T. Sato (SBN 238486)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930

10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 12 2016

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 **BC 6 48 6 5 2**

15 CONSUMER ADVOCACY GROUP, INC.,
16 in the public interest,

17 Plaintiff,

18 v.

19 H MART COMPANIES, INC., a New York
20 Corporation; H MART, a business entity
21 form unknown; SAJO DAERIM CORP., a
22 business entity form unknown; DAERIM
23 CORPORATION, a business entity form
24 unknown; SAJO INDUSTRIES CO., LTD., a
25 business entity form unknown; EDS & CO.,
26 INC., a California Corporation; and DOES 1-
27 20;

28 Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
INJUNCTION

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

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

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
Defendants H MART COMPANIES, INC.; H MART; SAJO DAERIM CORP.; DAERIM
CORPORATION; SAJO INDUSTRIES CO., LTD.; EDS & CO., INC.; and DOES 1-20 as
follows:

//

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 H MART COMPANIES, INC. (“H MART COMPANIES”) is a New York Corporation, doing business in the State of California at all relevant times herein.
3. Defendant H MART (“H MART”) is a business entity form unknown, doing business in the State of California at all relevant times herein.
4. Defendant SAJO DAERIM CORP. (“SAJO DAERIM”) is a business entity form unknown, doing business in the State of California at all relevant times herein.
5. Defendant DAERIM CORPORATION (“DAERIM CORP”) is a business entity form unknown, doing business in the State of California at all relevant times herein.
6. Defendant SAJO INDUSTRIES CO., LTD. (“SAJO INDUSTRIES”) is a business entity form unknown, doing business in the State of California at all relevant times herein.
7. Defendant EDS & CO., INC. (“EDS”) is a California Corporation, 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 “Defendants” includes H MART COMPANIES, H MART, SAJO DAERIM, DAERIM CORP, SAJO INDUSTRIES, EDS, 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") of exposing, knowingly and
9 intentionally, persons in California to the Proposition 65-listed chemicals of such
10 products without first providing clear and reasonable warnings of such to the exposed
11 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
12 in such practice.

13 21. On February 27, 1987, the Governor of California added lead to the list of chemicals
14 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
15 lead is known to the State to cause developmental, female, and male reproductive
16 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
17 months after addition of lead to the list of chemicals known to the State to cause
18 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
19 and discharge prohibitions.

20 22. On October 1, 1992, the Governor of California added lead and lead compounds to the
21 list of chemicals known to the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(b)).
22 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
23 after addition of lead and lead compounds to the list of chemicals known to the State to
24 cause cancer, lead and lead compounds became fully subject to Proposition 65 warning
25 requirements and discharge prohibitions.

26 **SATISFACTION OF PRIOR NOTICE**

27 23. On or about December 15, 2015, Plaintiff served notice of alleged violations of Health
28 and Safety Code section 25249.6, concerning consumer products exposures, subject to a

1 private action to H MART COMPANIES, H MART, SAJO DAERIM, DAERIM
2 CORP, SAJO INDUSTRIES, EDS, and to the California Attorney General, County
3 District Attorneys, and City Attorneys for each city containing a population of at least
4 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
5 product Roasted Seasoned Seaweed 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 H MART COMPANIES, H MART,
23 SAJO DAERIM, DAERIM CORP, SAJO INDUSTRIES, EDS, and the public
24 prosecutors referenced in Paragraph 23.

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

1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against H MART COMPANIES, H
3 MART, SAJO DAERIM, DAERIM CORP, SAJO INDUSTRIES, EDS, and DOES 1-20 for
4 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
5 (Health & Safety Code, §§ 25249.5, et seq.))

6 **Roasted Seasoned Seaweed**

7 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
8 reference paragraphs 1 through 28 of this complaint as though fully set forth herein.
9 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Roasted Seasoned Seaweed, which includes but is
11 not limited to, ““Fresh & Clean” ‘ISO 9001’ (20g/50kcal) Imported by EDS & Co., Inc.
12 “SAJO” UPC: 8 801066 700796”” (“SEAWEED”).

13 30. SEAWEED contains LEAD.

14 31. Defendants knew or should have known that LEAD has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of LEAD in SEAWEED within Plaintiff's notice of alleged violations
18 further discussed above at Paragraphs 23.

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

25 33. Plaintiff is informed, believes, and thereon alleges that between December 15, 2012 and
26 the present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of SEAWEED, which Defendants manufactured, distributed, or
28 sold as mentioned above, to LEAD, without first providing any type of clear and
reasonable warning of such to the exposed persons before the time of exposure.

1 Defendants have distributed and sold SEAWEED in California. Defendants know and
2 intend that California consumers will use SEAWEED, thereby exposing them to LEAD.
3 Defendants thereby violated Proposition 65.

4 34. The principal routes of exposure were through ingestion, including hand to mouth
5 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by
6 eating and consuming SEAWEED, handling SEAWEED without wearing gloves or by
7 touching bare skin or mucus membranes with gloves after handling SEAWEED, or
8 through direct and indirect hand to mouth contact, hand to food to mouth, direct contact
9 to food then to mouth, hand to mucous membrane, or breathing in particulate matter
10 emanating from SEAWEED, as well as through environmental mediums that carry the
11 LEAD once contained within the SEAWEED.

12 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
13 Proposition 65 as to SEAWEED have been ongoing and continuous to the date of the
14 signing of this complaint, as Defendants engaged and continue to engage in conduct
15 which violates Health and Safety Code section 25249.6, including the manufacture,
16 distribution, promotion, and sale of SEAWEED, so that a separate and distinct violation
17 of Proposition 65 occurred each and every time a person was exposed to LEAD by
18 SEAWEED as mentioned herein.

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

22 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to LEAD from SEAWEED, pursuant to
24 Health and Safety Code section 25249.7(b).

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

27 **PRAYER FOR RELIEF**

28 Plaintiff demands against each of the Defendants as follows:

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

6
7
8 Dated: December 12, 2016

YEROUSHALMI & YEROUSHALMI

9
10 

11 BY: _____
12 Reuben Yeroushalmi
13 Attorneys for Plaintiff,
14 Consumer Advocacy Group, Inc.

15
16
17
18
19
20
21
22
23
24
25
26
27
28