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11 Consumer Advocacy Group, Inc.

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 07 2016

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 TAK SHING HONG, INC., AKA T.S.
19 EMPORIUM, a California Corporation;
20 FOUR SEAS MERCANTILE LIMITED, a
21 business entity form unknown; FOUR SEAS
22 GROUP, a business entity form unknown;
23 FOUR SEAS MERCANTILE HOLDINGS
24 LIMITED, a business entity form unknown;
25 NICO-NICO FOODS (S) PTE LTD, a
26 business entity form unknown; NICO-NICO
27 NORI INC., a business entity form unknown;
28 NICO-NICO NORI, a business entity form
unknown; AKITA TRADING CO., LTD., a
business entity form unknown; WELL LUCK
CO., INC., a New Jersey Corporation; ROM
AMERICA, INC., a California Corporation;
and DOES 1-30;

Defendants.

CASE NO.

BC 6 4 0 0 5 8

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)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 Defendants TAK SHING HONG, INC. AKA T.S. EMPORIUM; FOUR SEAS MERCANTILE
3 LIMITED; FOUR SEAS GROUP; FOUR SEAS MERCANTILE HOLDINGS LIMITED;
4 NICO-NICO FOODS (S) PTE LTD; NICO-NICO NORI INC.; NICO-NICO NORI; AKITA
5 TRADING CO., LTD.; WELL LUCK CO., INC.; ROM AMERICA, INC.; and DOES 1-20 as
6 follows:

7 **THE PARTIES**

- 8 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
9 organization qualified to do business in the State of California. CAG is a person within
10 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
11 as a private attorney general, brings this action in the public interest as defined under
12 Health and Safety Code section 25249.7, subdivision (d).
- 13 2. Defendant TAK SHING HONG, INC. AKA T.S. EMPORIUM (“TAK SHING”) is a
14 California Corporation, doing business in the State of California at all relevant times
15 herein.
- 16 3. Defendant FOUR SEAS MERCANTILE LIMITED (“FOUR SEAS MERCANTILE”) is
17 a business entity form unknown, doing business in the State of California at all relevant
18 times herein.
- 19 4. Defendant FOUR SEAS GROUP (“FOUR SEAS GROUP”) is a business entity form
20 unknown, doing business in the State of California at all relevant times herein.
- 21 5. Defendant FOUR SEAS MERCANTILE HOLDINGS LIMITED (“FOUR SEAS
22 HOLDINGS”) is a business entity form unknown, doing business in the State of
23 California at all relevant times herein.
- 24 6. Defendant NICO-NICO FOODS (S) PTE LTD (“NICO-NICO FOODS”) is a business
25 entity form unknown, doing business in the State of California at all relevant times
26 herein.
- 27 7. Defendant NICO-NICO NORI INC. (“NICO-NICO NORI INC”) is a business entity
28 form unknown, doing business in the State of California at all relevant times herein.

- 1 8. Defendant NICO-NICO NORI ("NICO-NICO NORI") is a business entity form
2 unknown, doing business in the State of California at all relevant times herein.
- 3 9. Defendant AKITA TRADING CO., LTD. ("AKITA") is a business entity form
4 unknown, doing business in the State of California at all relevant times herein.
- 5 10. Defendant WELL LUCK CO., INC. ("WELL LUCK") is a New Jersey Corporation,
6 doing business in the State of California at all relevant times herein.
- 7 11. Defendant ROM AMERICA, INC. ("ROM AMERICA") is a California Corporation,
8 doing business in the State of California at all relevant times herein.
- 9 12. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
10 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
11 this complaint to allege their true names and capacities when ascertained. Plaintiff is
12 informed, believes, and thereon alleges that each fictitiously named defendant is
13 responsible in some manner for the occurrences herein alleged and the damages caused
14 thereby.
- 15 13. At all times mentioned herein, the term "Defendants" includes TAK SHING, FOUR
16 SEAS MERCANTILE, FOUR SEAS GROUP, FOUR SEAS HOLDINGS, NICO-NICO
17 FOODS, NICO-NICO NORI INC, NICO-NICO NORI, AKITA, WELL LUCK, ROM
18 AMERICA, and DOES 1-20.
- 19 14. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
20 times mentioned herein have conducted business within the State of California.
- 21 15. Upon information and belief, at all times relevant to this action, each of the Defendants,
22 including DOES 1-20, was an agent, servant, or employee of each of the other
23 Defendants. In conducting the activities alleged in this Complaint, each of the
24 Defendants was acting within the course and scope of this agency, service, or
25 employment, and was acting with the consent, permission, and authorization of each of
26 the other Defendants. All actions of each of the Defendants alleged in this Complaint
27 were ratified and approved by every other Defendant or their officers or managing
28

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
2 the alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

13 18. This Court has jurisdiction over Defendants named herein because Defendants either
14 reside or are located in this State or are foreign corporations authorized to do business in
15 California, are registered with the California Secretary of State, or who do sufficient
16 business in California, have sufficient minimum contacts with California, or otherwise
17 intentionally avail themselves of the markets within California through their
18 manufacture, distribution, promotion, marketing, or sale of their products within
19 California to render the exercise of jurisdiction by the California courts permissible
20 under traditional notions of fair play and substantial justice.

21 19. Venue is proper in the County of Los Angeles because one or more of the instances of
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
23 because Defendants conducted, and continue to conduct, business in the County of Los
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

26 20. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures
28 to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

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

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

18 23. Proposition 65 provides that any person "violating or threatening to violate" the statute
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
20 25249.7. "Threaten to violate" means "to create a condition in which there is a
21 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 24. Plaintiff identified certain practices of manufacturers and distributors of products
25 bearing Lead and Lead Compounds ("LEAD") and Cadmium and Cadmium Compounds
26 ("CADMIUM") of exposing, knowingly and intentionally, persons in California to the
27 Proposition 65-listed chemicals of such products without first providing clear and
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1 reasonable warnings of such to the exposed persons prior to the time of exposure.

2 Plaintiff later discerned that Defendants engaged in such practice.

3 25. On February 27, 1987, the Governor of California added lead to the list of chemicals
4 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
5 Lead is known to the State to cause developmental, female, and male reproductive
6 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
7 months after addition of lead to the list of chemicals known to the State to cause
8 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
9 and discharge prohibitions.

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

16 27. On October 1, 1987, the Governor of California added Cadmium and Cadmium
17 Compounds to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.*
18 *tit. 27, § 27001(b)*). Cadmium is known to the State to cause cancer and developmental,
19 male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
20 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
21 to the State to cause cancer, Cadmium became fully subject to Proposition 65 warning
22 requirements and discharge prohibitions.

23 28. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
24 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
25 Cadmium is known to the State to cause developmental, male reproductive toxicity.
26 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
27 after addition of Cadmium to the list of chemicals known to the State to cause
28

1 reproductive toxicity, Cadmium became fully subject to Proposition 65 warning
2 requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 29. On or about December 31, 2015, Plaintiff gave notice of alleged violations of Health and
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a
6 private action to TAK SHING, FOUR SEAS MERCANTILE, FOUR SEAS GROUP,
7 FOUR SEAS HOLDINGS, NICO-NICO FOODS, NICO-NICO NORI INC, NICO-
8 NICO NORI, and to the California Attorney General, County District Attorneys, and
9 City Attorneys for each city containing a population of at least 750,000 people in whose
10 jurisdictions the violations allegedly occurred, concerning the product Dried Seaweed
11 containing LEAD.

12 30. On or about February 19, 2016, Plaintiff gave notice of alleged violations of Health and
13 Safety Code section 25249.6, concerning consumer products exposures, subject to a
14 private action to TAK SHING, AKITA, and to the California Attorney General, County
15 District Attorneys, and City Attorneys for each city containing a population of at least
16 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
17 product Seasoned Seaweed containing CADMIUM.

18 31. On or about April 12, 2016, Plaintiff gave notice of alleged violations of Health and
19 Safety Code section 25249.6, concerning consumer products exposures, subject to a
20 private action to WELL LUCK, TAK SHING, and to the California Attorney General,
21 County District Attorneys, and City Attorneys for each city containing a population of at
22 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
23 the product Seasoned Seaweed containing CADMIUM.

24 32. On or about May 13, 2016, Plaintiff gave notice of alleged violations of Health and
25 Safety Code section 25249.6, concerning consumer products exposures, subject to a
26 private action to TAK SHING, ROM AMERICA, and to the California Attorney General,
27 County District Attorneys, and City Attorneys for each city containing a population of at
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1 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
2 the product Olive Oil Laver containing LEAD.

3 33. Before sending the notice of alleged violations, Plaintiff investigated the consumer
4 products involved, the likelihood that such products would cause users to suffer
5 significant exposures to LEAD and CADMIUM, and the corporate structure of each of
6 the Defendants.

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

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

20 36. Plaintiff is commencing this action more than sixty (60) days from the dates that
21 Plaintiff gave notices of the alleged violation to TAK SHING, FOUR SEAS
22 MERCANTILE, FOUR SEAS GROUP, FOUR SEAS HOLDINGS, NICO-NICO
23 FOODS, NICO-NICO NORI INC, NICO-NICO NORI, AKITA, WELL LUCK, ROM
24 AMERICA, and the public prosecutors referenced in Paragraphs 29 and 32.

25 37. 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 TAK SHING, FOUR SEAS
3 MERCANTILE, FOUR SEAS GROUP, FOUR SEAS HOLDINGS, NICO-NICO FOODS,
4 NICO-NICO NORI INC, NICO-NICO NORI, and DOES 1-10 for Violations of Proposition
5 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§*
6 *25249.5, et seq.*))

7 **Dried Seaweed**

8 38. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
9 reference paragraphs 1 through 37 of this complaint as though fully set forth herein.

10 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
11 distributor, promoter, or retailer of Dried Seaweed, which includes but is not limited to,
12 "FOUR SEAS SEAWEEED" Wasabi Flavor; Net Weight: 1.32oz (37.5G); Four Seas
13 Mercantile Limited; Four Seas Group Building, No.1 Hong Kong Ting Road, Sai Kung,
14 Hong Kong; "Please store in a cool and dry place."; "Caution: The desiccant inside is
15 not for consumption."; Serving Size-5 Pieces; Servings Per Container 10; UPC: 8
16 888339 005215" ("FOUR SEAS SEAWEEED").

17 39. FOUR SEAS SEAWEEED contain LEAD.

18 40. 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 FOUR SEAS SEAWEEED within Plaintiff's notice of alleged
22 violations further discussed above at Paragraphs 29.

23 41. Plaintiff's allegations regarding FOUR SEAS SEAWEEED 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). FOUR SEAS SEAWEEED are consumer products, and, as mentioned
28 herein, exposures to LEAD took place as a result of such normal and foreseeable use.

42. Plaintiff is informed, believes, and thereon alleges that between December 31, 2012 and
the present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of FOUR SEAS SEAWEED, which Defendants manufactured,
2 distributed, or sold as mentioned above, to LEAD, without first providing any type of
3 clear and reasonable warning of such to the exposed persons before the time of
4 exposure. Defendants have distributed and sold FOUR SEAS SEAWEED in California.
5 Defendants know and intend that California consumers will use FOUR SEAS
6 SEAWEED, thereby exposing them to LEAD. Defendants thereby violated Proposition
7 65.

8 43. The principal routes of exposure are through ingestion, including hand to mouth
9 pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by eating
10 and consuming FOUR SEAS SEAWEED, handling FOUR SEAS SEAWEED without
11 wearing gloves or any other personal protective equipment, or by touching bare skin or
12 mucous membranes after handling FOUR SEAS SEAWEED, as well as through direct
13 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane,
14 or breathing in particulate matter dispersed from FOUR SEAS SEAWEED.

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

22 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
24 violations alleged herein will continue to occur into the future.

25 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to LEAD from FOUR SEAS SEAWEED,
27 pursuant to Health and Safety Code section 25249.7(b).

1 47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3
4 **SECOND CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against TAK SHING, AKITA, WELL**
6 **LUCK, and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and**
7 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

8 **Seasoned Seaweed**

9 48. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
10 reference paragraphs 1 through 47 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 Seasoned Seaweed, which includes but is not limited
13 to, "Hong Xiu 'Seasoned Seaweed'; Chilli; Net Content 100 Packs/ 90g; Packed for The
14 Akita Trading Co., Ltd. Product of China; UPC: 4 713632 510064'" ("SEASONED
15 SEAWEED").

16 49. SEASONED SEAWEED contain CADMIUM .

17 50. Defendants knew or should have known that CADMIUM has been identified by the
18 State of California as a chemical known to cause cancer and reproductive toxicity and
19 therefore was subject to Proposition 65 warning requirements. Defendants were also
20 informed of the presence of CADMIUM in SEASONED SEAWEED within Plaintiff's
21 notice of alleged violations further discussed above at Paragraphs 30 and 31.

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

1 52. Plaintiff is informed, believes, and thereon alleges that between February 19, 2013 and
2 the present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of SEASONED SEAWEED, which Defendants manufactured,
4 distributed, or sold as mentioned above, to CADMIUM, without first providing any type
5 of clear and reasonable warning of such to the exposed persons before the time of
6 exposure. Defendants have distributed and sold SEASONED SEAWEED in California.
7 Defendants know and intend that California consumers will use SEASONED
8 SEAWEED, thereby exposing them to CADMIUM. Defendants thereby violated
9 Proposition 65.

10 53. The principal routes of exposure are through ingestion, including hand to mouth
11 pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by eating
12 and consuming SEASONED SEAWEED, handling SEASONED SEAWEED without
13 wearing gloves or any other personal protective equipment, or by touching bare skin or
14 mucous membranes after handling SEASONED SEAWEED, as well as through direct
15 and indirect hand to mouth contact, hand to food to mouth, hand to mucous membrane,
16 or breathing in particulate matter dispersed from SEASONED SEAWEED.

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

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

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

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

6
7 **THIRD CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against TAK SHING, ROM**
9 **AMERICA, and DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water**
10 **and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

11 **Olive Oil Laver**

12 58. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
13 reference paragraphs 1 through 57 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 Olive Oil Laver, which includes but is not limited to,
16 "8 pack of "Good Fresh Light" brand "Premium" "Olive Oil Laver". Distributed by
17 Rom America Inc., Los Angeles C.A., Product of Korea. Exterior UPC: 8 809216
18 230049. Interior UPC: 8 809216 230032" ("LAVER").

19 59. LAVER contain LEAD.

20 60. 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 LAVER within Plaintiff's notice of alleged violations further
24 discussed above at Paragraphs 32.

25 61. Plaintiff's allegations regarding LAVER concerns "[c]onsumer products exposure[s],"
26 which "is an exposure that results from a person's acquisition, purchase, storage,
27 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
28 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b).*

1 LAYER are consumer products, and, as mentioned herein, exposures to LEAD took
2 place as a result of such normal and foreseeable use.

3 62. Plaintiff is informed, believes, and thereon alleges that between May 13, 2013 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of LAYER, which Defendants manufactured, distributed, or sold as
6 mentioned above, to LEAD, without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold LAYER in California. Defendants know and intend that California
9 consumers will use LAYER, thereby exposing them to LEAD. Defendants thereby
10 violated Proposition 65.

11 63. The principal routes of exposure are through ingestion, including hand to mouth
12 pathways, inhalation, and trans-dermal absorption. Persons sustain exposures by eating
13 and consuming LAYER, handling LAYER without wearing gloves or any other personal
14 protective equipment, or by touching bare skin or mucous membranes after handling
15 LAYER, as well as through direct and indirect hand to mouth contact, hand to food to
16 mouth, hand to mucous membrane, or breathing in particulate matter dispersed from
17 LAYER .

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

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

28

1 66. 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 LAVER, pursuant to Health
3 and Safety Code section 25249.7(b).

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

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13
14
15 Dated: November 4, 2016

YEROUSHALMI & YEROUSHALMI

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17 
18 BY: _____

19 Reuben Yeroushalmi
20 Attorneys for Plaintiff,
21 Consumer Advocacy Group, Inc.
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