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

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 **TAWA SUPERMARKET, INC. dba 99**
19 **RANCH MARKET and dba 168 MARKET,**
20 a California Corporation; **WISMETTAC**
21 **ASIAN FOODS, INC.,** a California
22 Corporation; **NISHIMOTO TRADING CO.**
23 **OF AMERICA, LTD.,** a California
24 Corporation; and **DOES 1-20;**

25 Defendants.

26 CASE NO.

BC 682891

27 **COMPLAINT FOR PENALTY AND**
28 **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 TAWA SUPERMARKET, INC. dba 99 RANCH MARKET and dba 168 MARKET;
WISMETTAC ASIAN FOODS, INC.; NISHIMOTO TRADING CO. OF AMERICA, LTD.;
and DOES 1-20 as follows:

THE PARTIES

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County Of Los Angeles

NOV 08 2017

Sherril H. Carter, Executive Officer/Clerk
By: Marlon Gomez, Deputy

- 1 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
2 organization qualified to do business in the State of California. CAG is a person within
3 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
4 as a private attorney general, brings this action in the public interest as defined under
5 Health and Safety Code section 25249.7, subdivision (d).
- 6 2. Defendant TAWA SUPERMARKET, INC. dba 99 RANCH MARKET and dba 168
7 MARKET ("TAWA"), is a California Corporation doing business in the State of
8 California at all relevant times herein.
- 9 3. Defendant WISMETTAC ASIAN FOODS, INC. ("WISMETTAC"), is a California
10 Corporation doing business in the State of California at all relevant times herein.
- 11 4. Defendant NISHIMOTO TRADING CO. OF AMERICA, LTD. ("NISHIMOTO"), is a
12 California Corporation doing business in the State of California at all relevant times
13 herein.
- 14 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
15 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
16 complaint to allege their true names and capacities when ascertained. Plaintiff is
17 informed, believes, and thereon alleges that each fictitiously named defendant is
18 responsible in some manner for the occurrences herein alleged and the damages caused
19 thereby.
- 20 6. At all times mentioned herein, the term "Defendants" includes TAWA, WISMETTAC,
21 NISHIMOTO and DOES 1-20.
- 22 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
23 times mentioned herein have conducted business within the State of California.
- 24 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
25 including DOES 1-20, was an agent, servant, or employee of each of the other
26 Defendants. In conducting the activities alleged in this Complaint, each of the
27 Defendants was acting within the course and scope of this agency, service, or
28 employment, and was acting with the consent, permission, and authorization of each of

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing agents.
3 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
4 wrongful conduct of each of the other Defendants.

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

9 JURISDICTION

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

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

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

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

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

14 19. Plaintiff identified certain practices of manufacturers and distributors of lead and lead
15 compounds ("LEAD")-bearing products of exposing, knowingly and intentionally,
16 persons in California to the Proposition 65-listed chemicals of such products without first
17 providing clear and reasonable warnings of such to the exposed persons prior to the time
18 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

19 **SATISFACTION OF PRIOR NOTICE**

20 20. On or about May 8, 2017 Plaintiff gave notice of alleged violations of Health and Safety
21 Code section 25249.6, concerning consumer products exposures subject to a private
22 action to TAWA, WISMETTAC, NISHIMOTO and to the California Attorney General,
23 County District Attorneys, and City Attorneys for each city containing a population of at
24 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
25 the product Ginger Products, containing LEAD.

26 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
27 products involved, the likelihood that such products would cause users to suffer
28 significant exposures to LEAD and the corporate structure of each of the Defendants.

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

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

13 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
14 gave notices of the alleged violation to TAWA, WISMETTAC, NISHIMOTO, and the
15 public prosecutors referenced in Paragraph 20.

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

19 **FIRST CAUSE OF ACTION**

20 (By CONSUMER ADVOCACY GROUP, INC. and against TAWA, WISMETTAC,
21 NISHIMOTO and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water
22 and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, et seq.))

23 **Ginger Product**

24 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
25 reference paragraphs 1 through 25 of this complaint as though fully set forth herein. Each
26 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
27 promoter, or retailer of Pickled Ginger, which includes but is not limited to "Shirakiku
28 Brand"; "Sweet Pickled Ginger"; "Net Wt. 12 oz."; "340g."; "Distributed by Wismettac

1 Asian Foods, Inc.”; “Santa Fe Springs, CA 90670”; “Product of USA”; “13060 Amasu
2 Shoga 12 oz.” 074410130602 (“PICKLED GINGER”).

3 27. PICKLED GINGER contains LEAD.

4 28. Defendants knew or should have known that LEAD has been identified by the State of
5 California as a chemical known to cause cancer and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of LEAD in PICKLED GINGER within Plaintiff's notice of alleged
8 violations further discussed above at Paragraph 20.

9 29. Plaintiff's allegations regarding PICKLED GINGER concern “[c]onsumer products
10 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
11 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
12 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
13 *25602(b)*. PICKLED GINGER is a consumer product, and, as mentioned herein,
14 exposures to lead took place as a result of such normal and foreseeable consumption and
15 use.

16 30. Plaintiff is informed, believes, and thereon alleges that between May 8, 2014, and the
17 present, each of the Defendants knowingly and intentionally exposed their employees,
18 California consumers of PICKLED GINGER, which Defendants manufactured,
19 distributed, or sold as mentioned above, to LEAD without first providing any type of
20 clear and reasonable warning of such to the exposed persons before the time of exposure.
21 Defendants have distributed and sold PICKLED GINGER in California. Defendants
22 know and intend that California consumers will use and consume PICKLED GINGER,
23 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

24 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by eating and consuming PICKLED GINGER, handling
26 PICKLED GINGER without wearing gloves or any other personal protective equipment,
27 or by touching bare skin or mucous membranes with gloves after handling PICKLED
28

1 GINGER, as well as through direct and indirect hand to mouth contact, hand to mucous
2 membrane, or breathing in particulate matter dispersed from PICKLED GINGER.

3 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to PICKLED GINGER have been ongoing and continuous to the date
5 of the signing of this complaint, as Defendants engaged and continue to engage in
6 conduct which violates Health and Safety Code section 25249.6, including the
7 manufacture, distribution, promotion, and sale of PICKLED GINGER, so that a separate
8 and distinct violation of Proposition 65 occurred each and every time a person was
9 exposed to lead by PICKLED GINGER as mentioned herein.

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

13 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to lead from PICKLED GINGER, pursuant to
15 Health and Safety Code section 25249.7(b).

16 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
17 filing this Complaint.

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19 **PRAYER FOR RELIEF**

20 Plaintiff demands against each of the Defendants as follows:

- 21 1. A permanent injunction mandating Proposition 65-compliant warnings;
22 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
23 3. Costs of suit;

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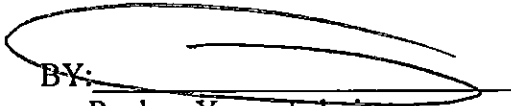
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- 4. Reasonable attorney fees and costs; and
- 5. Any further relief that the court may deem just and equitable.

Dated: 11-8, 2017

YEROUSHALMI & YEROUSHLAMI

BY: 

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