

1 Reuben Yeroushalmi (SBN 193981)
Ben Yeroushalmi (SBN 232540)
2 Jerry L. Johnson (SBN 196329)
Peter T. Sato (SBN 238486)
3 **YEROUSHALMI & YEROUSHALMI**
An Association of Independent Law Corporations
4 9100 Wilshire Boulevard, Suite 240W
Beverly Hills, California 90212
5 Telephone: (310)623-1926. Facsimile: (310)623-1930

6 Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

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

AUG 29 2018

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**
10 **STANLEY MOSK COURTHOUSE**

11 **BC 719892**

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

13)
14 Plaintiff,)

15 vs.)

16 DAISO CALIFORNIA, LLC, a California)
Limited Liability Corporation;)
17 DAISO HOLDING USA INC., a California)
Corporation)
18 DAISO JAPAN, a business entity form)
unknown;)
19 and DOES 1-10,)

20 Defendants.)
21

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.)

UNLIMITED CIVIL ACTION

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 Defendants DAISO CALIFORNIA, LLC; DAISO HOLDING USA, INC; DAISO JAPAN; and
24 DOES 1-10 as follows:

25 **THE PARTIES**

- 26 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization
27 qualified to do business in the State of California. CAG is a person within the meaning of
28 Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney

1 general, brings this action in the public interest as defined under Health and Safety Code section
2 25249.7, subdivision (d).

- 3 2. Defendant DAISO CALIFORNIA, LLC is a California Limited Liability Corporation
4 authorized to do business in California and doing business in the State of California at all
5 relevant times herein.
- 6 3. Defendant DAISO HOLDING USA, INC, is a California Corporation authorized to do business
7 and doing business in the State of California at all relevant times herein.
- 8 4. Defendant DAISO JAPAN is a business entity form unknown, doing business in the State of
9 California at all relevant times herein.
- 10 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and
11 therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to
12 allege their true names and capacities when ascertained. Plaintiff is informed, believes, and
13 thereon alleges that each fictitiously named defendant is responsible in some manner for the
14 occurrences herein alleged and the damages caused thereby.
- 15 6. At all times mentioned herein, the term "Defendants" includes DAISO CALIFORNIA, LLC,
16 DAISO HOLDING USA INC., DAISO JAPAN (collectively "THE DAISO PARTIES"), and
17 DOES 1-10.
- 18 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times
19 mentioned herein have conducted business within the State of California.
- 20 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
21 including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In
22 conducting the activities alleged in this Complaint, each of the Defendants was acting within the
23 course and scope of this agency, service, or employment, and was acting with the consent,
24 permission, and authorization of each of the other Defendants. All actions of each of the
25 Defendants alleged in this Complaint were ratified and approved by every other Defendant or
26 their officers or managing agents. Alternatively, each of the Defendants aided, conspired with
27 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

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

22 **BACKGROUND AND PRELIMINARY FACTS**

23 13. In 1986, California voters approved an initiative to address growing concerns about exposure to
24 toxic chemicals and declared their right "[t]o be informed about exposures to chemicals that
25 cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed Law, Gen.
26 Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement
27 Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* ("Proposition 65"),
28 helps to protect California's drinking water sources from contamination, to allow consumers to

1 make informed choices about the products they buy, and to enable persons to protect themselves
2 from toxic chemicals as they see fit.

3 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to the
4 state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* §
5 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals
6 and chemical families. Proposition 65 imposes warning requirements and other controls that
7 apply to Proposition 65-listed chemicals.

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

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

20 17. Plaintiff identified certain practices of manufacturers and distributors of products bearing
21 LEAD and LEAD COMPOUNDS ("LEAD") of exposing, knowingly and intentionally, persons
22 in California to the Proposition 65-listed chemicals of such products without first providing
23 clear and reasonable warnings of such to the exposed persons prior to the time of exposure.
24 Plaintiff later discerned that Defendants engaged in such practice.

25 18. On February 27, 1987, the Governor of California added LEAD to the list of chemicals known to
26 the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)). LEAD is known to
27 the State to cause developmental, female, and male reproductive toxicity. Pursuant to Health and
28 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of LEAD to the

1 list of chemicals known to the State to cause reproductive toxicity. LEAD became fully subject
2 to Proposition 65 warning requirements and discharge prohibitions.

3 19. On October 1, 1992, the Governor of California added LEAD to the list of chemicals known to
4 the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(b)). Pursuant to Health and Safety
5 Code sections 25249.9 and 25249.10, twenty (20) months after addition of LEAD to the list of
6 chemicals known to the State to cause cancer, LEAD became fully subject to Proposition 65
7 warning requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

9 20. On or about April 13, 2018, Plaintiff gave notice of alleged violations of Health and Safety
10 Code section 25249.6, concerning consumer products exposures, subject to a private action to
11 THE DAISO PARTIES and to the California Attorney General, County District Attorneys, and
12 City Attorneys for each city containing a population of at least 750,000 people in whose
13 jurisdictions the violations allegedly occurred, concerning the product Seaweed containing
14 LEAD.

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

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

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

1 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave
2 notices of the alleged violation to DAISO, and the public prosecutors referenced in Paragraph
3 20.

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

7
8 **FIRST CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against THE DAISO PARTIES and DOES 1-**
10 **10 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
11 **(Health & Safety Code, §§ 25249.5, et seq.))**

12 **Seaweed**

13 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference
14 paragraphs 1 through 25 of this complaint as though fully set forth herein. Each of the
15 Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or
16 retailer of Seaweed, which includes, ""Dried Seaweed" "Yaki Onigiri Nori" "NET WT. 0.27 oz.
17 (9.3g)" "Product of Japan" "Exported by DAISO INDUSTRIES CO LTD" "UPC 4 901174
18 511094" ("SEAWEED").

19 27. SEAWEED contains LEAD.

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

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

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

3 30. Plaintiff is informed, believes, and thereon alleges that between April 13, 2015 and the present,
4 each of the Defendants knowingly and intentionally exposed California consumers and users of
5 SEAWEEED, which Defendants manufactured, distributed, or sold as mentioned above, with
6 LEAD, without first providing any type of clear and reasonable warning of such to the exposed
7 persons before the time of exposure. Defendants have distributed and sold SEAWEEED in
8 California. Defendants know and intend that California consumers will use SEAWEEED,
9 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

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

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

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

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

1 35. In the absence of equitable relief, the general public will continue to be involuntarily exposed to
2 LEAD that is contained in SEAWEED, creating a substantial risk of irreparable harm. Thus by
3 committing the acts alleged herein, Defendants have caused irreparable harm for which there is
4 no plain, speedy, or adequate remedy of law.

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

7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

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

14 Dated: August 29, 2018

YEROUSHALMI & YEROUSHLAMI

15 BY:

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