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

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

13 **COUNTY OF MARIN**

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

16 Plaintiff,

17 v.

18 SPROUTS FARMERS MARKET, INC., a
19 Delaware Corporation; and DOES 1-20;

20 Defendants.

CASE NO. *11/16* 00796 -

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)

BY FAX

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
22 Defendant SPROUTS FARMERS MARKET, INC., and DOES 1-20 as follows:

23 **THE PARTIES**

- 24 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
25 organization qualified to do business in the State of California. CAG is a person within
26 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
27 as a private attorney general, brings this action in the public interest as defined under
28 Health and Safety Code section 25249.7, subdivision (d).

- 1 2. Defendant SPROUTS FARMERS MARKET, INC. (“SPROUTS”) is a Delaware
2 Corporation, doing business in the State of California at all relevant times herein.
3 3.
4 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
5 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
6 this complaint to allege their true names and capacities when ascertained. Plaintiff is
7 informed, believes, and thereon alleges that each fictitiously named defendant is
8 responsible in some manner for the occurrences herein alleged and the damages caused
9 thereby.
- 10 5. At all times mentioned herein, the term “Defendant” includes SPROUTS, NISHIMOTO
11 TRADING CO., LTD, NISHIMOTO CO., LTD., NICO, INTELLICOMP, SEASNAX,
12 and DOES 1-20.
- 13 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
14 times mentioned herein have conducted business within the State of California.
- 15 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
16 including DOES 1-20, was an agent, servant, or employee of each of the other
17 Defendants. In conducting the activities alleged in this Complaint, each of the
18 Defendants was acting within the course and scope of this agency, service, or
19 employment, and was acting with the consent, permission, and authorization of each of
20 the other Defendants. All actions of each of the Defendants alleged in this Complaint
21 were ratified and approved by every other Defendant or their officers or managing
22 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
23 the alleged wrongful conduct of each of the other Defendants.
- 24 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
25 Defendants was a person doing business within the meaning of Health and Safety Code
26 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
27 employees at all relevant times.

28 **JURISDICTION**

- 1 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
2 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
3 those given by statute to other trial courts. This Court has jurisdiction over this action
4 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
5 violations of Proposition 65 in any Court of competent jurisdiction.
- 6 10. This Court has jurisdiction over Defendants named herein because Defendants either
7 reside or are located in this State or are foreign corporations authorized to do business in
8 California, are registered with the California Secretary of State, or who do sufficient
9 business in California, have sufficient minimum contacts with California, or otherwise
10 intentionally avail themselves of the markets within California through their
11 manufacture, distribution, promotion, marketing, or sale of their products within
12 California to render the exercise of jurisdiction by the California courts permissible
13 under traditional notions of fair play and substantial justice.
- 14 11. Venue is proper in the County of Marin because one or more of the instances of
15 wrongful conduct occurred, and continues to occur, in the County of Marin and/or
16 because Defendants conducted, and continue to conduct, business in the County of
17 Marin with respect to the consumer product that is the subject of this action.

18 **BACKGROUND AND PRELIMINARY FACTS**

- 19 12. In 1986, California voters approved an initiative to address growing concerns about
20 exposure to toxic chemicals and declared their right “[t]o be informed about exposures
21 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
22 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
23 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
24 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
25 from contamination, to allow consumers to make informed choices about the products
26 they buy, and to enable persons to protect themselves from toxic chemicals as they see
27 fit.
- 28

- 1 13. Proposition 65 requires the Governor of California to publish a list of chemicals known
2 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
3 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
4 over 700 chemicals and chemical families. Proposition 65 imposes warning
5 requirements and other controls that apply to Proposition 65-listed chemicals.
- 6 14. All businesses with ten (10) or more employees that operate or sell products in
7 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
8 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
9 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
10 reasonable” warnings before exposing a person, knowingly and intentionally, to a
11 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 12 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
13 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
14 25249.7. "Threaten to violate" means "to create a condition in which there is a
15 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
16 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
17 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 18 16. Plaintiff identified certain practices of manufacturers and distributors of products
19 bearing Lead and Lead Compounds (“LEAD”), exposing, knowingly and intentionally,
20 persons in California to said Proposition 65-listed chemical without first providing clear
21 and reasonable warnings to the exposed persons prior to the time of exposure. Plaintiff
22 later discerned that Defendants engaged in such practice.
- 23 17. On February 27, 1987 the Governor of California added LEAD to the list of chemicals
24 known to the State to cause reproductive toxicity, developmental, female, male, and on
25 October 1, 1992, the Governor added LEAD to the list of chemicals known to the State
26 to cause cancer. Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
27 twenty (20) months after addition of LEAD to the list of chemicals known to the State to
28

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

3 **SATISFACTION OF PRIOR NOTICE**

4 18. On or about June 16, 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 SPROUTS and to the California Attorney General, County District
7 Attorneys, and City Attorneys for each city containing a population of at least 750,000
8 people in whose jurisdictions the violations allegedly occurred, concerning Roasted
9 Seaweed containing LEAD.

10 19. On or about June 16, 2015, Plaintiff gave notice of alleged violations of Health and
11 Safety Code section 25249.6, concerning consumer products exposures, subject to a
12 private action to SPROUTS, and to the California Attorney General, County District
13 Attorneys, and City Attorneys for each city containing a population of at least 750,000
14 people in whose jurisdictions the violations allegedly occurred, concerning Roasted
15 Seaweed containing LEAD.

16 20. On or about June 22, 2015, Plaintiff gave notice of alleged violations of Health and
17 Safety Code section 25249.6, concerning consumer products exposures, subject to a
18 private action to SPROUTS and to the California Attorney General, County District
19 Attorneys, and City Attorneys for each city containing a population of at least 750,000
20 people in whose jurisdictions the violations allegedly occurred, concerning Roasted
21 Seaweed containing LEAD.

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

25 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
26 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
27 for Plaintiff who executed the certificate had consulted with at least one person with
28 relevant and appropriate expertise who reviewed data regarding the exposures to LEAD,

1 the subject Proposition 65-listed chemicals of this action. Based on that information, the
2 attorney for Plaintiff who executed the Certificate of Merit believed there was a
3 reasonable and meritorious case for this private action. The attorney for Plaintiff
4 attached to the Certificate of Merit served on the Attorney General the confidential
5 factual information sufficient to establish the basis of the Certificate of Merit.

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

9 24. Plaintiff is commencing this action more than sixty (60) days from the dates that
10 Plaintiff gave notices of the alleged violation to SPROUTS, and the public prosecutors
11 referenced in Paragraphs 18 through 20.

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

15 **FIRST CAUSE OF ACTION**

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

19 **Seasnax Roasted Seaweed**

20 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
21 reference paragraphs 1 through 26 of this complaint as though fully set forth herein. Each
22 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
23 promoter, or retailer of roasted seaweed, which includes but is not limited to, "The
24 Original Seasnax™ Strangely Addictive™ Organic Premium Roasted Seaweed Snack
25 SS-Class UPC #7 28028 01220 0 ("SEASNAX SEAWEED").

26 27. SEASNAX SEAWEED contains LEAD.

27 28. Defendants knew or should have known that LEAD has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of LEAD in SEASNAX SEAWEEED within Plaintiff's notice of alleged
3 violations further discussed above at Paragraphs 18.

4 29. Plaintiff's allegations regarding SEASNAX SEAWEEED concerns "[c]onsumer products
5 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
6 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
7 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
8 25602(b). SEASNAX SEAWEEED is a consumer product, and, as mentioned herein,
9 exposures to LEAD took place as a result of such normal and foreseeable use.

10 30. Plaintiff is informed, believes, and thereon alleges that between June 16, 2012 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of SEASNAX SEAWEEED, which Defendants manufactured,
13 distributed, or sold as mentioned above, to LEAD, without first providing any type of
14 clear and reasonable warning of such to the exposed persons before the time of
15 exposure. Defendants have distributed and sold SEASNAX SEAWEEED in California.
16 Defendants know and intend that California consumers will use SEASNAX SEAWEEED,
17 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

18 31. The principal routes of exposure with regard to SEASNAX SEAWEEED were through
19 ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption.
20 Persons sustain exposures by eating and consuming SEASNAX SEAWEEED, handling
21 SEASNAX SEAWEEED without wearing gloves or any other personal protective
22 equipment, or by touching bare skin or mucous membranes with gloves after handling
23 SEASNAX SEAWEEED as well as through direct and indirect hand to mouth contact,
24 hand to mucous membrane, or breathing in particulate matter dispersed from SEASNAX
25 SEAWEEED.

26 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to SEASNAX SEAWEEED have been ongoing and continuous to the
28 date of the signing of this complaint, as Defendants engaged and continue to engage in

conduct which violates Health and Safety Code section 25249.6, including the manufacture, distribution, promotion, and sale of SEASNAX SEAWEEED, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to LEAD by SEASNAX SEAWEEED as mentioned herein.

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

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

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

SECOND CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against NISHIMOTO TRADING CO., LTD., NISHIMOTO CO., LTD., NICO, 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.*))

Temakiyanan Roasted Seaweed

36. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 29 of this complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of roasted seaweed, which includes but is not limited to, “Temakiyanan Roasted Seaweed; Family Type Yakinori; produced by Nico-Nico Nori, Inc. since 1921; 20 Sheets (Half Cut); Net Weight 0.88 oz. (25g); NICO-NICO NORI; Distributed by: Nishimoto Trading Co., Ltd.; Product of China; UPC #: 0 74410 51720 5 (“TEMAKIYASAN SEAWEEED”).

37. TEMAKIYASAN SEAWEEED contains LEAD.

38. Defendants knew or should have known that LEAD has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of LEAD in TEMAKIYASAN SEAWEEED within Plaintiff's notice of
3 alleged violations further discussed above at Paragraphs 19.

4 39. Plaintiff's allegations regarding TEMAKIYASAN SEAWEEED concerns "[c]onsumer
5 products exposure[s]," which "is an exposure that results from a person's acquisition,
6 purchase, storage, consumption, or other reasonably foreseeable use of a consumer
7 good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.*
8 tit. 27, § 25602(b). TEMAKIYASAN SEAWEEED is a consumer product, and, as
9 mentioned herein, exposures to LEAD took place as a result of such normal and
10 foreseeable use.

11 40. Plaintiff is informed, believes, and thereon alleges that between June 16, 2012 and the
12 present, each of the Defendants knowingly and intentionally exposed California
13 consumers and users of TEMAKIYASAN SEAWEEED, which Defendants
14 manufactured, distributed, or sold as mentioned above, to LEAD, without first providing
15 any type of clear and reasonable warning of such to the exposed persons before the time
16 of exposure. Defendants have distributed and sold TEMAKIYASAN SEAWEEED in
17 California. Defendants know and intend that California consumers will use
18 TEMAKIYASAN SEAWEEED, thereby exposing them to LEAD. Defendants thereby
19 violated Proposition 65.

20 41. The principal routes of exposure with regard to TEMAKIYASAN SEAWEEED were
21 through ingestion, including hand to mouth pathways, inhalation, and trans-dermal
22 absorption. Persons sustain exposures by eating and consuming TEMAKIYASAN
23 SEAWEEED, handling TEMAKIYASAN SEAWEEED without wearing gloves or any
24 other personal protective equipment, or by touching bare skin or mucous membranes
25 with gloves after handling TEMAKIYASAN SEAWEEED as well as through direct and
26 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
27 matter dispersed from TEMAKIYASAN SEAWEEED.
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1 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to TEMAKIYASAN SEAWEED have been ongoing and continuous
3 to the date of the signing of this complaint, as Defendants engaged and continue to
4 engage in conduct which violates Health and Safety Code section 25249.6, including the
5 manufacture, distribution, promotion, and sale of TEMAKIYASAN SEAWEED, so that
6 a separate and distinct violation of Proposition 65 occurred each and every time a person
7 was exposed to LEAD by TEMAKIYASAN SEAWEED as mentioned herein.

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

11 44. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to LEAD from TEMAKIYASAN
13 SEAWEED, pursuant to Health and Safety Code section 25249.7(b).

14 45. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
15 filing this Complaint.

16 **THIRD CAUSE OF ACTION**

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

20 **Sprout's Roasted Seaweed**

21 46. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 29 of this complaint as though fully set forth herein.
23 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of roasted seaweed, which includes but is not limited to,
25 1) "Sprout's Farmers Market Roasted Seaweed Snack Pack; Sea Salt; 3 Pack; Net Wt.
26 .18 oz. (5 g); Non GMO Verified; Manufactured Exclusively for Sprouts Farmers
27 Market; Product of Korea; UPC #: 6 46670 31455 1"; 2) "Sprout's Farmers Market
28 Spicy Roasted Seaweed snack pack; Net Wt. 0.35 oz. (10 g); Manufactured Exclusively

1 for Sprouts Farmers Market; Product of Korea; UPC #: 6 46670 31012 6” (SPROUTS
2 SEAWEEED).

3 47. SPROUTS SEAWEEED contains LEAD.

4 48. 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 SPROUTS SEAWEEED within Plaintiff’s notice of alleged
8 violations further discussed above at Paragraphs 20.

9 49. Plaintiff’s allegations regarding SPROUTS SEAWEEED concerns “[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). SPROUTS SEAWEEED are consumer products, and, as mentioned herein,
14 exposures to LEAD took place as a result of such normal and foreseeable use.

15 50. Plaintiff is informed, believes, and thereon alleges that between June 22, 2012 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of SPROUTS SEAWEEED, which Defendants manufactured,
18 distributed, or sold as mentioned above, to LEAD, without first providing any type of
19 clear and reasonable warning of such to the exposed persons before the time of
20 exposure. Defendants have distributed and sold SPROUTS SEAWEEED in California.
21 Defendants know and intend that California consumers will use SPROUTS SEAWEEED,
22 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

23 51. The principal routes of exposure with regard to SPROUTS SEAWEEED were through
24 ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption.
25 Persons sustain exposures by eating and consuming SPROUTS SEAWEEED, handling
26 SPROUTS SEAWEEED without wearing gloves or any other personal protective
27 equipment, or by touching bare skin or mucous membranes with gloves after handling
28 SPROUTS SEAWEEED as well as through direct and indirect hand to mouth contact,

1 hand to mucous membrane, or breathing in particulate matter dispersed from SPROUTS
2 SEAWEED.

3 52. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to SPROUTS SEAWEED have been ongoing and continuous to the
5 date 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 SPROUTS SEAWEED, so that a
8 separate and distinct violation of Proposition 65 occurred each and every time a person
9 was exposed to LEAD by SPROUTS SEAWEED as mentioned herein.

10 53. 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 54. 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 SPROUTS SEAWEED,
15 pursuant to Health and Safety Code section 25249.7(b).

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

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YEROUSHALMI & YEROUSHALMI

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