

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Teresa Beaudet

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroshalmi.com

3 **YEROUSHALMI & YEROUSHALMI\***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 H MART, INC. a Delaware Corporation;  
17 H MART TORRANCE, LLC, a California  
18 Limited Liability Company;  
19 H MART COMPANIES, INC., a New York  
20 Corporation;  
21 MAN JUN USA, INC., a California  
22 Corporation  
23 and DOES 1-20,

24 Defendants.

CASE NO. **20STCV17548**

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  
2 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
3 against defendants H MART, INC.; H MART TORRANCE, LLC; H MART COMPANIES,  
4 INC.; MAN JUN USA, INC. and DOES 1-20 as follows:

5 **THE PARTIES**

- 6 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an  
7 organization qualified to do business in the State of California. CAG is a person within  
8 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting  
9 as a private attorney general, brings this action in the public interest as defined under  
10 Health and Safety Code Section 25249.7, subdivision (d).
- 11 2. Defendant H MART, INC. (“H MART”) is a Delaware Corporation doing business in  
12 the State of California at all relevant times herein.
- 13 3. Defendant H MART TORRANCE, LLC (“H MART TORRANCE”) is a California  
14 Limited Liability Company, authorized to do business in California and doing business  
15 in the State of California at all relevant times herein.
- 16 4. Defendant H MART COMPANIES, INC. (“H MART COMPANIES”) is a New York  
17 Corporation, doing business in the State of California at all relevant times herein.
- 18 5. Defendant MAN JUN USA, INC. (“MAN JUN”) is a California Corporation,  
19 authorized to do business in California and doing business in the State of California at  
20 all relevant times herein.
- 21 6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-  
22 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
23 this Complaint to allege their true names and capacities when ascertained. Plaintiff is  
24 informed, believes, and thereon alleges that each fictitiously named defendant is  
25 responsible in some manner for the occurrences herein alleged and the damages caused  
26 thereby.
- 27 7. At all times mentioned herein, the term “Defendants” includes H MART, H MART  
28 TORRANCE, H MART COMPANIES, MAN JUN, and DOES 1-20.

- 1 8. 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 9. Upon information and belief, at all times relevant to this action, the Defendants,  
4 including DOES 1-20, was an agent, servant, or employee of each of the other  
5 Defendant. 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 10. Plaintiff is informed, believes, and thereon alleges that at all relevant times, the  
13 Defendant 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 11. 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 12. 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  
24 in 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 13. 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  
5 and/or because Defendants conducted, and continue to conduct, business in the County  
6 of Los Angeles with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

8 14. 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 15. 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 16. 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  
26 and reasonable” warnings before exposing a person, knowingly and intentionally, to a  
27 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

1 17. 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* §  
5 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day  
6 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

7 18. Plaintiff identified certain practices of manufacturers and distributors of Dried Seaweed  
8 of exposing, knowingly and intentionally, persons in California to Cadmium and  
9 Cadmium Compounds ("Cadmium") and Lead and Lead Compounds ("Lead") in 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 19. On October 1, 1987, the Governor of California added Cadmium to the list of chemicals  
14 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to  
15 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after  
16 addition of Cadmium to the list of chemicals known to the State to cause cancer,  
17 Cadmium became fully subject to Proposition 65 warning requirements and discharge  
18 prohibitions.

19 20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals  
20 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*  
21 *Regs.* tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental,  
22 female, and male reproductive toxicity. Pursuant to Health and Safety Code Sections  
23 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of  
24 chemicals known to the State to cause reproductive toxicity, Cadmium became fully  
25 subject to Proposition 65 warning requirements and discharge prohibitions.

26 21. On October 1, 1992, the Governor of California added Lead to the list of chemicals  
27 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to  
28

1 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after  
2 addition of Lead to the list of chemicals known to the State to cause cancer, Lead  
3 became fully subject to Proposition 65 warning requirements and discharge  
4 prohibitions.

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

12 **SATISFACTION OF PRIOR NOTICE**

13 23. On or about October 11, 2019 Plaintiff gave notice of alleged violations of Health and  
14 Safety Code Section 25249.6, concerning consumer products exposures, subject to a  
15 private action to H MART, H MART TORRANCE, H MART COMPANIES, MAN  
16 JUN and to the California Attorney General, County District Attorneys, and City  
17 Attorneys for each city containing a population of at least 750,000 people in whose  
18 jurisdictions the violations allegedly occurred, concerning the Dried Laver

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

23 25. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
24 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
25 for Plaintiff who executed the certificate had consulted with at least one person with  
26 relevant and appropriate expertise who reviewed data regarding the exposures to  
27 Cadmium, the subject Proposition 65-listed chemical of this action. Based on that  
28

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

6 26. Plaintiff's notice 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 27. Plaintiff is commencing this action more than sixty (60) days from the dates that  
10 Plaintiff gave notice of the alleged violations to GALLERIA, and the public prosecutors  
11 referenced in Paragraph 18 and 19.

12 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General,  
13 nor 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 H MART, H MART**  
17 **TORRANCE, H MART COMPANIES, MAN JUN, and DOES 1-10 for Violations**  
18 **of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
**(Health & Safety Code, §§ 25249.5, et seq.)**

### 19 **Seaweed**

20 29. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this  
21 complaint as though fully set forth herein.

22 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
23 distributor, promoter, or retailer of Dried Seaweed ("Seaweed") including but not  
24 limited to: "MANJUN;" "DOUBLE ROASTED ONIGIRI SEAWEED;" "20 (Sheets)  
25 24g (0.84 oz), 71 kcal;" "2019.12.17.;" "PRODUCT OF KOREA;" "JL162;"  
26 "www.manjun.net;" "DOUBLE ROASTED ONIGIRI SEAWEED.;" "Manufactured by  
27 MANJUN FOODS CO., LTD.;" "8 802241 126257;"

1 31. Seaweed contains Cadmium.

2 32. Defendants knew or should have known that Cadmium has been identified by the State  
3 of California as a chemical known to cause cancer, developmental, and reproductive  
4 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants  
5 were also informed of the presence of Cadmium in Seaweed within Plaintiff's notice of  
6 alleged violations further discussed above at Paragraph 23.

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

13 34. Plaintiff is informed, believes, and thereon alleges that between October 11, 2016 and  
14 the present, each of the Defendants knowingly and intentionally exposed California  
15 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold  
16 as mentioned above, to Cadmium, without first providing any type of clear and  
17 reasonable warning of such to the exposed persons before the time of exposure.  
18 Defendants have distributed and sold Seaweed in California. Defendants know and  
19 intend that California consumers will use and consume Seaweed, thereby exposing them  
20 to Cadmium. Defendants thereby violated Proposition 65.

21 35. The principal routes of exposure with regard to Seaweed are and were through  
22 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.  
23 Persons sustain exposures primarily by eating and consuming Seaweed , and  
24 additionally by handling Seaweed without wearing gloves or any other personal  
25 protective equipment, or by touching bare skin or mucous membranes with gloves after  
26 handling Seaweed as well as through direct and indirect hand to mouth contact, hand to  
27 mucous membrane, or even breathing in particulate matter dispersed from Seaweed

28



1 during use, as well as through environmental mediums that carry the Cadmium once  
2 contained within the Seaweed.

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

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

12 38. Based on the allegations herein, Defendants are liable for civil penalties of up to  
13 \$2,500.00 per day per individual exposure to Cadmium from Seaweed, pursuant to  
14 Health and Safety Code Section 25249.7(b).

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

### 17 **SECOND CAUSE OF ACTION**

18 **(By CONSUMER ADVOCACY GROUP, INC. and against GALLERIA, and**  
19 **DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
20 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

#### 21 **Seaweed**

22 40. Plaintiff repeats and incorporates by reference paragraphs 1 through 39 of this  
23 complaint as though fully set forth herein.

24 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
25 distributor, promoter, or retailer of Dried Seaweed ("Seaweed") including but not  
26 limited to: "MANJUN;" "DOUBLE ROASTED ONIGIRI SEAWEED;" "20 (Sheets)  
27 24g (0.84 oz), 71 kcal;" "2019.12.17.;" "PRODUCT OF KOREA;" "JL162;"

1 “www.manjun.net;” “DOUBLE ROASTED ONIGIRI SEAWEED;” “Manufactured by  
2 MANJUN FOODS CO., LTD.,” “8 802241 126257;”

3 42. Seaweed contains Lead.

4 43. Defendants knew or should have known that Lead has been identified by the State of  
5 California as a chemical known to cause cancer, developmental, and reproductive  
6 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants  
7 were also informed of the presence of Lead in Seaweed within Plaintiff's notice of  
8 alleged violations further discussed above at Paragraph 23.

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

15 45. Plaintiff is informed, believes, and thereon alleges that between October 11, 2016 and  
16 the present, each of the Defendants knowingly and intentionally exposed California  
17 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold  
18 as mentioned above, to Lead, without first providing any type of clear and reasonable  
19 warning of such to the exposed persons before the time of exposure. Defendants have  
20 distributed and sold Seaweed in California. Defendants know and intend that California  
21 consumers will use and consume Seaweed, thereby exposing them to Lead. Defendants  
22 thereby violated Proposition 65.

23 46. The principal routes of exposure with regard to Seaweed are and were through  
24 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.  
25 Persons sustain exposures primarily by eating and consuming Seaweed , and  
26 additionally by handling Seaweed without wearing gloves or any other personal  
27 protective equipment, or by touching bare skin or mucous membranes with gloves after  
28

1 handling Seaweed as well as through direct and indirect hand to mouth contact, hand to  
2 mucous membrane, or even breathing in particulate matter dispersed from Seaweed  
3 during use, as well as through environmental mediums that carry the Lead once  
4 contained within the Seaweed.

5 47. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations  
6 of Proposition 65 as to Seaweed have been ongoing and continuous, as Defendants  
7 engaged and continue to engage in conduct which violates Health and Safety Code  
8 Section 25249.6, including the manufacture, distribution, promotion, and sale of  
9 Seaweed, so that a separate and distinct violation of Proposition 65 occurred each and  
10 every time a person was exposed to Lead by Seaweed as mentioned herein.

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

14 49. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to Lead from Seaweed, pursuant to Health  
16 and Safety Code Section 25249.7(b).

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

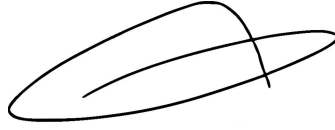
19 **PRAYER FOR RELIEF**

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;
  - 24 4. Reasonable attorney fees and costs; and
  - 25 5. Any further relief that the court may deem just and equitable.
- 26  
27  
28

1 Dated: May 7, 2020

YEROUSHALMI & YEROUSHALMI\*

2  
3 

4 \_\_\_\_\_  
5 Reuben Yeroushalmi  
6 Attorneys for Plaintiff,  
7 CONSUMER ADVOCACY GROUP, INC.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28