

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Yolanda Orozco

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5 Attorneys for Plaintiff,

6 CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

10
11 CONSUMER ADVOCACY GROUP, INC.,
12 in the public interest,

13 Plaintiff,

14 v.

15 GALLERIA MARKET, LP, a California
16 Limited Partnership
and DOES 1-20,

17 Defendants.

CASE NO. 20STCV16860

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 two causes of action
2 against defendants GALLERIA MARKET, LP and DOES 1-20 as follows:

3 **THE PARTIES**

- 4 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
5 organization qualified to do business in the State of California. CAG is a person within
6 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
7 as a private attorney general, brings this action in the public interest as defined under
8 Health and Safety Code Section 25249.7, subdivision (d).
- 9 2. Defendant CALLERIA MARKET, LP (“GALLERIA”) is a California Limited
10 Partnership, authorized to do business in California and doing business in the State of
11 California at all relevant times herein.
- 12 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
13 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
14 this Complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the damages caused
17 thereby.
- 18 4. At all times mentioned herein, the term “Defendants” includes GALLERIA, and DOES
19 1-20.
- 20 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
21 times mentioned herein have conducted business within the State of California.
- 22 6. Upon information and belief, at all times relevant to this action, the Defendants,
23 including DOES 1-20, was an agent, servant, or employee of each of the other
24 Defendant. In conducting the activities alleged in this Complaint, each of the
25 Defendants was acting within the course and scope of this agency, service, or
26 employment, and was acting with the consent, permission, and authorization of each of
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint
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1 were ratified and approved by every other Defendant or their officers or managing
2 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
3 the alleged wrongful conduct of each of the other Defendants.

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

8 **JURISDICTION**

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

26 **BACKGROUND AND PRELIMINARY FACTS**

- 1 11. In 1986, California voters approved an initiative to address growing concerns about
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures
3 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
7 from contamination, to allow consumers to make informed choices about the products
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see
9 fit.
- 10 12. Proposition 65 requires the Governor of California to publish a list of chemicals known
11 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
12 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
13 over 700 chemicals and chemical families. Proposition 65 imposes warning
14 requirements and other controls that apply to Proposition 65-listed chemicals.
- 15 13. All businesses with ten (10) or more employees that operate or sell products in
16 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
17 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
18 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear
19 and reasonable” warnings before exposing a person, knowingly and intentionally, to a
20 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 21 14. Proposition 65 provides that any person “violating or threatening to violate” the statute
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
23 25249.7. “Threaten to violate” means “to create a condition in which there is a
24 substantial probability that a violation will occur.” *Health & Safety Code* §
25 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day
26 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 15. Plaintiff identified certain practices of manufacturers and distributors of Dried Seaweed
2 of exposing, knowingly and intentionally, persons in California to Cadmium and
3 Cadmium Compounds (“Cadmium”) in such products without first providing clear and
4 reasonable warnings of such to the exposed persons prior to the time of exposure.
5 Plaintiff later discerned that Defendants engaged in such practice.

6 16. On October 1, 1987, the Governor of California added Cadmium to the list of chemicals
7 known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*). Pursuant to
8 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
9 addition of Cadmium to the list of chemicals known to the State to cause cancer,
10 Cadmium became fully subject to Proposition 65 warning requirements and discharge
11 prohibitions.

12 17. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
13 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
14 *Regs. tit. 27, § 27001(c)*). Cadmium is known to the State to cause developmental,
15 female, and male reproductive toxicity. Pursuant to Health and Safety Code Sections
16 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
17 chemicals known to the State to cause reproductive toxicity, Cadmium became fully
18 subject to Proposition 65 warning requirements and discharge prohibitions.

19 **SATISFACTION OF PRIOR NOTICE**

20 18. On or about October 18, 2019 Plaintiff gave notice of alleged violations of Health and
21 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
22 private action to GALLERIA and to the California Attorney General, County District
23 Attorneys, and City Attorneys for each city containing a population of at least 750,000
24 people in whose jurisdictions the violations allegedly occurred, concerning the Dried
25 Seaweed Laver

26 19. On or about November 25, 2019 Plaintiff gave notice of alleged violations of Health
27 and Safety Code Section 25249.6, concerning consumer products exposures, subject to
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1 a private action to GALLERIA and to the California Attorney General, County District
2 Attorneys, and City Attorneys for each city containing a population of at least 750,000
3 people in whose jurisdictions the violations allegedly occurred, concerning the Dried
4 Laver

5 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer
6 products involved, the likelihood that such products would cause users to suffer
7 significant exposures to Cadmium, and the corporate structure of each of the
8 Defendants.

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

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

22 23. Plaintiff is commencing this action more than sixty (60) days from the dates that
23 Plaintiff gave notice of the alleged violations to GALLERIA, and the public prosecutors
24 referenced in Paragraph 18 and 19.

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

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1 **FIRST CAUSE OF ACTION**

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

5 **Seaweed**

6 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this
7 complaint as though fully set forth herein.

8 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Dried Seaweed Laver (“Seaweed I”), including but
10 not limited to “Seaweed Love”; “Dried Seaweed (Laver)”; “50 Sheets Net: 130g”;
11 “Manufactured by Chung Hae S&D Co., Ltd”; “Product of Korea”; “UPC 8 809089
12 430430”

13 27. Seaweed I contains Cadmium.

14 28. Defendants knew or should have known that Cadmium has been identified by the State
15 of California as a chemical known to cause cancer, developmental, and reproductive
16 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
17 were also informed of the presence of Cadmium in Seaweed I within Plaintiff’s notice of
18 alleged violations further discussed above at Paragraph 18.

19 29. Plaintiff’s allegations regarding Product concerns “[c]onsumer products exposure[s],”
20 which “is an exposure that results from a person’s acquisition, purchase, storage,
21 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
22 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.
23 Seaweed I is a consumer product, and, as mentioned herein, exposures to Cadmium
24 took place as a result of such normal and foreseeable consumption and use.

25 30. Plaintiff is informed, believes, and thereon alleges that between October 18, 2016 and
26 the present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Seaweed I, which Defendants manufactured, distributed, or sold
28 as mentioned above, to Cadmium, without first providing any type of clear and

1 reasonable warning of such to the exposed persons before the time of exposure.

2 Defendants have distributed and sold Seaweed I in California. Defendants know and
3 intend that California consumers will use and consume Seaweed I, thereby exposing
4 them to Cadmium. Defendants thereby violated Proposition 65.

5 31. The principal routes of exposure with regard to Seaweed I are and were through
6 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.
7 Persons sustain exposures primarily by eating and consuming Seaweed I , and
8 additionally by handling Seaweed I without wearing gloves or any other personal
9 protective equipment, or by touching bare skin or mucous membranes with gloves after
10 handling Seaweed I as well as through direct and indirect hand to mouth contact, hand
11 to mucous membrane, or even breathing in particulate matter dispersed from Seaweed I
12 during use, as well as through environmental mediums that carry the Cadmium once
13 contained within the Seaweed I.

14 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
15 of Proposition 65 as to Seaweed I have been ongoing and continuous, as Defendants
16 engaged and continue to engage in conduct which violates Health and Safety Code
17 Section 25249.6, including the manufacture, distribution, promotion, and sale of
18 Seaweed I, so that a separate and distinct violation of Proposition 65 occurred each and
19 every time a person was exposed to Cadmium by Seaweed I as mentioned herein.

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

23 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to Cadmium from Seaweed I, pursuant to
25 Health and Safety Code Section 25249.7(b).

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

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1 **SECOND CAUSE OF ACTION**

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

5 **Dried Laver**

6 36. Plaintiff repeats and incorporates by reference paragraphs 1 through 35 of this
7 complaint as though fully set forth herein.

8 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Dried Laver (“Seaweed II”), including but not
10 limited to “DRIED LAVER;” “NET WT. 85g (3oz);” “DISTRIBUTED BY CHANG-
11 TUH CO. 13285 Amar Rd. Industry, CA 91746, U.S.A;” “PRODUCT OF KOREA;” “8
12 809152 838651;”

13 38. Seaweed II contains Cadmium.

14 39. Defendants knew or should have known that Cadmium has been identified by the State
15 of California as a chemical known to cause cancer, developmental, and reproductive
16 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
17 were also informed of the presence of Cadmium in Seaweed I within Plaintiff’s notice of
18 alleged violations further discussed above at Paragraph 19.

19 40. Plaintiff’s allegations regarding Product concerns “[c]onsumer products exposure[s],”
20 which “is an exposure that results from a person’s acquisition, purchase, storage,
21 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
22 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.
23 Seaweed I is a consumer product, and, as mentioned herein, exposures to Cadmium
24 took place as a result of such normal and foreseeable consumption and use.

25 41. Plaintiff is informed, believes, and thereon alleges that between November 25, 2016 and
26 the present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Seaweed I, which Defendants manufactured, distributed, or sold
28 as mentioned above, to Cadmium, without first providing any type of clear and

1 reasonable warning of such to the exposed persons before the time of exposure.

2 Defendants have distributed and sold Seaweed II in California. Defendants know and
3 intend that California consumers will use and consume Seaweed II, thereby exposing
4 them to Cadmium. Defendants thereby violated Proposition 65.

5 42. The principal routes of exposure with regard to Seaweed II are and were through
6 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.
7 Persons sustain exposures primarily by eating and consuming Seaweed II , and
8 additionally by handling Seaweed II without wearing gloves or any other personal
9 protective equipment, or by touching bare skin or mucous membranes with gloves after
10 handling Seaweed II as well as through direct and indirect hand to mouth contact, hand
11 to mucous membrane, or even breathing in particulate matter dispersed from Seaweed II
12 during use, as well as through environmental mediums that carry the Cadmium once
13 contained within the Seaweed II.

14 43. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
15 of Proposition 65 as to Seaweed II have been ongoing and continuous, as Defendants
16 engaged and continue to engage in conduct which violates Health and Safety Code
17 Section 25249.6, including the manufacture, distribution, promotion, and sale of
18 Seaweed II, so that a separate and distinct violation of Proposition 65 occurred each and
19 every time a person was exposed to Cadmium by Seaweed II as mentioned herein.

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

23 45. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to Cadmium from Seaweed II, pursuant to
25 Health and Safety Code Section 25249.7(b).

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

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PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: May 1, 2020

YEROUSHALMI & YEROUSHALMI*



Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.