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 10 CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

13 Plaintiff,

14 v.

15 MITSUWA CORPORATION, a California
 16 Corporation;
 17 CENTRAL BOEKI CALIF., LTD., a
 18 California Corporation;
 19 PAX'S DISTRIBUTORS, a Business Entity
 20 Form Unknown;
 21 and DOES 1-60,

22 Defendants.

CASE NO. **20STCV47785**

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)

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges six causes of action against
 24 defendants MITSUWA CORPORATION; CENTRAL BOEKI CALIF., LTD.; PAX'S
 25 DISTRIBUTORS; and DOES 1-60 as follows:
 26
 27
 28

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant MITSUWA CORPORATION (“MITSUWA”) is a California Corporation doing business in the State of California at all relevant times herein.
3. Defendant CENTRAL BOEKI CALIF., LTD. (“CENTRAL”) is a California Corporation doing business in the State of California at all relevant times herein.
4. Defendant PAX’S DISTRIBUTORS (“PAX”) is a Business Entity Form Unknown doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-60, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
6. At all times mentioned herein, the term “Defendants” includes MITSUWA, CENTRAL, PAX, and DOES 1-60.
7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-60, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or 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
3 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
4 alleged 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
20 manufacture, distribution, promotion, marketing, or sale of their products within
21 California to render the exercise of jurisdiction by the California courts permissible
22 under traditional notions 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 Los
26 Angeles with respect to the consumer product that is the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

2 13. In 1986, California voters approved an initiative to address growing concerns about
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
8 from contamination, to allow consumers to make informed choices about the products
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see
10 fit.

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

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

22 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
24 25249.7. "Threaten to violate" means "to create a condition in which there is a
25 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

28

- 1 17. Plaintiff identified certain practices of knowingly and intentionally, persons in California
2 to Lead and Lead Compounds, Cadmium and Cadmium Compounds without first
3 providing clear and reasonable warnings of such to the exposed persons prior to the time
4 of exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 5 18. On October 1, 1992 the Governor of California added Lead and Lead Compounds
6 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
7 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
8 twenty (20) months after addition of Lead to the list of chemicals known to the State to
9 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
10 discharge prohibitions.
- 11 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals
12 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
13 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
14 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
15 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
16 the State to cause developmental and reproductive toxicity, Lead became fully subject to
17 Proposition 65 warning requirements and discharge prohibitions.
- 18 20. On October 1, 1987 the Governor of California added Cadmium and Cadmium
19 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
20 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
21 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
22 chemicals known to the State to cause cancer, Cadmium became fully subject to
23 Proposition 65 warning requirements and discharge prohibitions.
- 24 21. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
25 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
26 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
27 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
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1 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
2 to the State to cause developmental and reproductive toxicity, Cadmium became fully
3 subject to Proposition 65 warning requirements and discharge prohibitions.

4 **SATISFACTION OF PRIOR NOTICE**

5 22. Plaintiff served the following notices for alleged violations of Health and Safety Code
6 Section 25249.6, concerning consumer products exposures:

- 7 a. On or about December 23, 2019, Plaintiff gave notice of alleged violations of
8 Health and Safety Code Section 25249.6, concerning consumer products
9 exposures subject to a private action to MITSUWA and to the California
10 Attorney General, County District Attorneys, and City Attorneys for each city
11 containing a population of at least 750,000 people in whose jurisdictions the
12 violations allegedly occurred, concerning Dried Seaweeds.
- 13 b. On or about March 18, 2020, Plaintiff gave notice of alleged violations of
14 Health and Safety Code Section 25249.6, concerning consumer products
15 exposures subject to a private action to MITSUWA and to the California
16 Attorney General, County District Attorneys, and City Attorneys for each city
17 containing a population of at least 750,000 people in whose jurisdictions the
18 violations allegedly occurred, concerning Dried Seaweed.
- 19 c. On or about May 14, 2020, Plaintiff gave notice of alleged violations of Health
20 and Safety Code Section 25249.6, concerning consumer products exposures
21 subject to a private action to MITSUWA, CENTRAL, and to the California
22 Attorney General, County District Attorneys, and City Attorneys for each city
23 containing a population of at least 750,000 people in whose jurisdictions the
24 violations allegedly occurred, concerning Dried Seaweed.
- 25 d. On or about May 18, 2020, Plaintiff gave notice of alleged violations of Health
26 and Safety Code Section 25249.6, concerning consumer products exposures
27 subject to a private action to MITSUWA and to the California Attorney General,
28

1 County District Attorneys, and City Attorneys for each city containing a
2 population of at least 750,000 people in whose jurisdictions the violations
3 allegedly occurred, concerning Seaweed.

4 e. On or about July 15, 2020, Plaintiff gave notice of alleged violations of Health
5 and Safety Code Section 25249.6, concerning consumer products exposures
6 subject to a private action to MITSUWA, CENTRAL, and to the California
7 Attorney General, County District Attorneys, and City Attorneys for each city
8 containing a population of at least 750,000 people in whose jurisdictions the
9 violations allegedly occurred, concerning Dried Fish.

10 f. On or about July 22, 2020, Plaintiff gave notice of alleged violations of Health
11 and Safety Code Section 25249.6, concerning consumer products exposures
12 subject to a private action to MITSUWA, PAX, and to the California Attorney
13 General, County District Attorneys, and City Attorneys for each city containing
14 a population of at least 750,000 people in whose jurisdictions the violations
15 allegedly occurred, concerning Dried Fish.

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

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

3 25. Plaintiff's notices of alleged violations also included Certificates of Service and a
4 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
5 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

6 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notice of the alleged violations to MITSUWA, CENTRAL, PAX, and the public
8 prosecutors referenced in Paragraph 22.

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

12 **FIRST CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against MITSUWA and DOES**
14 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
15 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

16 **Dried Seaweeds**

17 28. Plaintiff repeats and incorporates by reference paragraphs 1 through 27 of this complaint
18 as though fully set forth herein.

19 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Dried Seaweeds ("Seaweed I"), including but not
21 limited to: "HEARTFUL FARM;" "DRIED SEAWEED;" "HEARTFUL KAISO
22 SALAD;" "PRODUCT OF JAPAN;" "NET WT.: 8GRIO.28oz;" "DISTRIBUTED BY
23 MITSUWA CORPORATION TORRANCE, CA 90501;" "2020.4.14;"
24 <http://www.mitsuifoods.co.jp/>; "0120-130570;" "4 970858005204".

25 30. Seaweed I contains Lead and Cadmium.

26 31. Defendants knew or should have known that Lead and Cadmium have been identified by
27 the State of California as a chemical known to cause cancer and reproductive toxicity
28 and therefore were subject to Proposition 65 warning requirements. Defendants were

1 also informed of the presence of Lead and Cadmium in Seaweed I within Plaintiff's
2 notice of alleged violations further discussed above at Paragraph 22a.

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

7 Seaweed I is a consumer product, and, as mentioned herein, exposures to Lead and
8 Cadmium took place as a result of such normal and foreseeable consumption and use.

9 33. Plaintiff is informed, believes, and thereon alleges that between December 23, 2016 and
10 the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Seaweed I, which Defendants manufactured, distributed, or sold
12 as mentioned above, to Lead and Cadmium, without first providing any type of clear and
13 reasonable warning of such to the exposed persons before the time of exposure.

14 Defendants have distributed and sold Seaweed I in California. Defendants know and
15 intend that California consumers will use and consume Seaweed I, thereby exposing
16 them to Lead and Cadmium. Defendants thereby violated Proposition 65.

17 34. The principal routes of exposure are through dermal contact, ingestion and inhalation.
18 Persons sustain exposures by eating, mixing, or handling Seaweed I with or without
19 wearing gloves or any other personal protective equipment, or by touching bare skin or
20 mucous membranes with gloves after handling Seaweed I, as well as through direct and
21 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
22 matter emanating from Seaweed I, as well as through environmental mediums that carry
23 the Cadmium and Lead once contained within the Seaweed I..

24 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Seaweed I have been ongoing and continuous, as Defendants
26 engaged and continue to engage in conduct which violates Health and Safety Code
27 Section 25249.6, including the manufacture, distribution, promotion, and sale of
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1 Seaweed I, so that a separate and distinct violation of Proposition 65 occurred each and
2 every time a person was exposed to Lead and Cadmium by Seaweed I as mentioned
3 herein.

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

7 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
8 \$2,500.00 per day per individual exposure to Lead and Cadmium from Seaweed I,
9 pursuant to Health and Safety Code Section 25249.7(b).

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

12 **SECOND CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against MITSUWA and DOES**
14 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
15 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

16 **Dried Seaweed**

17 39. Plaintiff repeats and incorporates by reference paragraphs 1 through 38 of this complaint
18 as though fully set forth herein.

19 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Dried Seaweed (“Seaweed II”), including but not
21 limited to: "Hagoromo;" “DRIED SEAWEED;” “HAGOROMO OMUSUBINORI
22 YAKI;” "PRODUCT OF JAPAN;" DISTRIBUTED BY MITSUWA CORPORATION
23 TORRANCE, CA 90501;" "NET WT.: 10GR/0.35oz;" “4 902560 413824;”.

24 41. Seaweed II contains Lead.

25 42. Defendants knew or should have known that Lead has been identified by the State of
26 California as a chemical known to cause cancer and reproductive toxicity and therefore
27 were subject to Proposition 65 warning requirements. Defendants were also informed of
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1 the presence of Lead in Seaweed II within Plaintiff's notice of alleged violations further
2 discussed above at Paragraph 22b.

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

9 44. Plaintiff is informed, believes, and thereon alleges that between March 18, 2017 and the
10 present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Seaweed II, which Defendants manufactured, distributed, or sold
12 as mentioned above, to Lead, without first providing any type of clear and reasonable
13 warning of such to the exposed persons before the time of exposure. Defendants have
14 distributed and sold Seaweed II in California. Defendants know and intend that
15 California consumers will use and consume Seaweed II, thereby exposing them to Lead.
16 Defendants thereby violated Proposition 65.

17 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.
18 Persons sustain exposures by eating, mixing, or handling Seaweed II with or without
19 wearing gloves or any other personal protective equipment, or by touching bare skin or
20 mucous membranes with gloves after handling Seaweed II, as well as through direct and
21 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
22 matter emanating from Seaweed II, as well as through environmental mediums that carry
23 the Lead once contained within the Seaweed II.

24 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Seaweed II have been ongoing and continuous, as Defendants
26 engaged and continue to engage in conduct which violates Health and Safety Code
27 Section 25249.6, including the manufacture, distribution, promotion, and sale of
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1 Seaweed II, so that a separate and distinct violation of Proposition 65 occurred each and
2 every time a person was exposed to Lead by Seaweed II as mentioned herein.

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

6 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to Lead from Seaweed II, pursuant to Health
8 and Safety Code Section 25249.7(b).

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

11 **THIRD CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against MITSUWA,**
13 **CENTRAL, and DOES 21-30 for Violations of Proposition 65, The Safe Drinking**
14 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
15 ***seq.*))**

16 **Dried Seaweed**

17 50. Plaintiff repeats and incorporates by reference paragraphs 1 through 49 of this complaint
18 as though fully set forth herein.

19 51. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Dried Seaweed (“Seaweed III”), including but not
21 limited to: "Dried Seaweed"; “Fukushima Tennen Rishirikonbu”; “Distributed By:
22 Central Boeki Calif., Ltd.”; “Net Wt.:35gr/1.24oz”; “4 905923 755913.

23 52. Seaweed III contains Lead.

24 53. Defendants knew or should have known that Lead has been identified by the State of
25 California as a chemical known to cause cancer and reproductive toxicity and therefore
26 were subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of Lead in Seaweed III within Plaintiff’s notice of alleged violations further
28 discussed above at Paragraph 22c.

1 54. Plaintiff’s allegations regarding Seaweed III concerns “[c]onsumer products
2 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
5 25602(b). Seaweed III is a consumer product, and, as mentioned herein, exposures to
6 Lead took place as a result of such normal and foreseeable consumption and use.

7 55. Plaintiff is informed, believes, and thereon alleges that between May 14, 2017 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Seaweed III, which Defendants manufactured, distributed, or
10 sold as mentioned above, to Lead, without first providing any type of clear and
11 reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold Seaweed III in California. Defendants know and
13 intend that California consumers will use and consume Seaweed III, thereby exposing
14 them to Lead. Defendants thereby violated Proposition 65.

15 56. The principal routes of exposure are through dermal contact, ingestion and inhalation.
16 Persons sustain exposures by eating, mixing, or handling Seaweed III with or without
17 wearing gloves or any other personal protective equipment, or by touching bare skin or
18 mucous membranes with gloves after handling Seaweed III, as well as through direct and
19 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
20 matter emanating from Seaweed III, as well as through environmental mediums that
21 carry the Lead once contained within the Seaweed III.

22 57. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
23 Proposition 65 as to Seaweed III have been ongoing and continuous, as Defendants
24 engaged and continue to engage in conduct which violates Health and Safety Code
25 Section 25249.6, including the manufacture, distribution, promotion, and sale of
26 Seaweed III, so that a separate and distinct violation of Proposition 65 occurred each and
27 every time a person was exposed to Lead by Seaweed III as mentioned herein.

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

4 59. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Lead from Seaweed III, pursuant to Health
6 and Safety Code Section 25249.7(b).

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

9
10 **FOURTH CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against MITSUWA and DOES**
12 **31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
13 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Seaweed**

15 61. Plaintiff repeats and incorporates by reference paragraphs 1 through 60 of this complaint
16 as though fully set forth herein.

17 62. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Dried Seaweed (“Seaweed IV”), including but not
19 limited to: “Hagoromo;” “Dried Seaweed;” “Net Wt.: 10GR/0.35oz;” “Distributed by
20 Mitsuwa Corporation;” “4 902560 413824;” “Product of Japan”.

21 63. Seaweed IV contains Lead.

22 64. Defendants knew or should have known that Lead has been identified by the State of
23 California as a chemical known to cause cancer and reproductive toxicity and therefore
24 were subject to Proposition 65 warning requirements. Defendants were also informed of
25 the presence of Lead in Seaweed IV within Plaintiff’s notice of alleged violations further
26 discussed above at Paragraph 22d.

27 65. Plaintiff’s allegations regarding Seaweed IV concerns “[c]onsumer products
28 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
storage, consumption, or other reasonably foreseeable use of a consumer good, or any

1 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
2 25602(b). Seaweed IV is a consumer product, and, as mentioned herein, exposures to
3 Lead took place as a result of such normal and foreseeable consumption and use.

4 66. Plaintiff is informed, believes, and thereon alleges that between May 18, 2017 and the
5 present, each of the Defendants knowingly and intentionally exposed California
6 consumers and users of Seaweed IV, which Defendants manufactured, distributed, or
7 sold as mentioned above, to Lead, without first providing any type of clear and
8 reasonable warning of such to the exposed persons before the time of exposure.

9 Defendants have distributed and sold Seaweed IV in California. Defendants know and
10 intend that California consumers will use and consume Seaweed IV, thereby exposing
11 them to Lead. Defendants thereby violated Proposition 65.

12 67. The principal routes of exposure are through dermal contact, ingestion and inhalation.
13 Persons sustain exposures by eating, mixing, or handling Seaweed IV with or without
14 wearing gloves or any other personal protective equipment, or by touching bare skin or
15 mucous membranes with gloves after handling Seaweed IV, as well as through direct and
16 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
17 matter emanating from Seaweed IV, as well as through environmental mediums that
18 carry the Lead once contained within the Seaweed IV.

19 68. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
20 Proposition 65 as to Seaweed IV have been ongoing and continuous, as Defendants
21 engaged and continue to engage in conduct which violates Health and Safety Code
22 Section 25249.6, including the manufacture, distribution, promotion, and sale of
23 Seaweed IV, so that a separate and distinct violation of Proposition 65 occurred each and
24 every time a person was exposed to Lead by Seaweed IV as mentioned herein.

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

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

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

6
7 **FIFTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against MITSUWA,**
9 **CENTRAL, and DOES 41-50 for Violations of Proposition 65, The Safe Drinking**
10 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
11 ***seq.*))**

12 **Dried Fish**

13 72. Plaintiff repeats and incorporates by reference paragraphs 1 through 71 of this complaint
14 as though fully set forth herein.

15 73. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Dried Baked Fish (“Fish I”), including but not limited
17 to: “Baked Flying Fish”; “Sasaki Ago Aburiyaki”; “009-600232”; “Net Wt.:
18 50GR/1.7oz;” “UPC 4 937932 028498”.

19 74. Fish I contains Lead.

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

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

1 Fish I is a consumer product, and, as mentioned herein, exposures to Lead took place as
2 a result of such normal and foreseeable consumption and use.

3 77. Plaintiff is informed, believes, and thereon alleges that between July 15, 2017 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Fish I, which Defendants manufactured, distributed, or sold as
6 mentioned above, to Lead, without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold Fish I in California. Defendants know and intend that California
9 consumers will use and consume Fish I, thereby exposing them to Lead. Defendants
10 thereby violated Proposition 65.

11 78. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by eating, mixing, or handling Fish I with or without wearing
13 gloves or any other personal protective equipment, or by touching bare skin or mucous
14 membranes with gloves after handling Fish I, as well as through direct and indirect hand
15 to mouth contact, hand to mucous membrane, or breathing in particulate matter
16 emanating from Fish I, as well as through environmental mediums that carry the Lead
17 once contained within the Fish I.

18 79. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to Fish I have been ongoing and continuous, as Defendants engaged
20 and continue to engage in conduct which violates Health and Safety Code Section
21 25249.6, including the manufacture, distribution, promotion, and sale of Fish I, so that a
22 separate and distinct violation of Proposition 65 occurred each and every time a person
23 was exposed to Lead by Fish I as mentioned herein.

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

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1 81. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Lead from Fish I, pursuant to Health and
3 Safety Code Section 25249.7(b).

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

6
7 **SIXTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against MITSUWA, PAX, and**
9 **DOES 51-60 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
10 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

11 **Dried Fish**

12 83. Plaintiff repeats and incorporates by reference paragraphs 1 through 82 of this complaint
13 as though fully set forth herein.

14 84. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Seasoned Filefish (“Fish II”), including but not
16 limited to: “Seasoned Filefish Cutted;” “S-Trust (Wasabi Kawahagi); Net Wt.: 0.63oz
17 (18g);” “ITEM#PC18652;” “Distributed by Pax’s;” “UPC 4 562486 042913”; “Product
18 of Japan”.

19 85. Fish II contains Lead.

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

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

1 Fish II is a consumer product, and, as mentioned herein, exposures to Lead took place as
2 a result of such normal and foreseeable consumption and use.

3 88. Plaintiff is informed, believes, and thereon alleges that between July 22, 2017 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Fish II, which Defendants manufactured, distributed, or sold as
6 mentioned above, to Lead, without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold Fish II in California. Defendants know and intend that California
9 consumers will use and consume Fish II, thereby exposing them to Lead. Defendants
10 thereby violated Proposition 65.

11 89. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by eating, mixing, or handling Fish II with or without wearing
13 gloves or any other personal protective equipment, or by touching bare skin or mucous
14 membranes with gloves after handling Fish II, as well as through direct and indirect hand
15 to mouth contact, hand to mucous membrane, or breathing in particulate matter
16 emanating from Fish II, as well as through environmental mediums that carry the Lead
17 once contained within the Fish II.

18 90. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to Fish II have been ongoing and continuous, as Defendants engaged
20 and continue to engage in conduct which violates Health and Safety Code Section
21 25249.6, including the manufacture, distribution, promotion, and sale of Fish II, so that a
22 separate and distinct violation of Proposition 65 occurred each and every time a person
23 was exposed to Lead by Fish II as mentioned herein.

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

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1 92. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Lead from Fish II, pursuant to Health and
3 Safety Code Section 25249.7(b).

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

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13
14 Dated: December 15, 2020

YEROUSHALMI & YEROUSHALMI*

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16 

17 _____
18 Reuben Yeroushalmi
19 Attorneys for Plaintiff,
20 CONSUMER ADVOCACY GROUP, INC.