

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: John Doyle

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CONSUMER ADVOCACY GROUP, INC.

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

8 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

14 v.

15 GW SUPERMARKET OF ROSEMEAD,
INC., a California Corporation;
16 GW SUPERMARKET OF CA, INC., a
California Corporation;
17 KIM SENG COMPANY INC. DBA IHA
BEVERAGE a California Corporation;
18 RICHIN TRADING, INC., a California
Corporation;
19 WEI-CHUAN U.S.A, INC. a California
Corporation;
20 GW SUPERMARKET OF ROWLAND
HEIGHTS, INC., a California Corporation;
21 GW SUPERMARKET OF MONTEREY
PARK, INC., a California Corporation;
22 and DOES 1-40,

24 Defendants.

CASE NO. 20STCV21985

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 four causes of action
2 against Defendants GW SUPERMARKET OF ROSEMEAD, INC., GW SUPERMARKET OF
3 CA, INC., KIM SENG COMPANY INC. DBA IHA BEVERAGE, RICHIN TRADING, INC.,
4 WEI-CHUAN U.S.A, INC., GW SUPERMARKET OF ROWLAND HEIGHTS, INC., GW
5 SUPERMARKET OF MONTEREY PARK, INC., and DOES 1-40 as follows:

6 **THE PARTIES**

- 7 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
8 organization qualified to do business in the State of California. CAG is a person within
9 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
10 as a private attorney general, brings this action in the public interest as defined under
11 Health and Safety Code Section 25249.7, subdivision (d).
- 12 2. Defendant GW SUPERMARKET OF ROSEMEAD, INC. (“GW ROSEMEAD”) is a
13 California Corporation qualified to do business in California and doing business in the
14 State of California at all relevant times herein.
- 15 3. Defendant GW SUPERMARKET OF CA, INC. (“GW CA”) is a California
16 Corporation qualified to do business in California and doing business in the State of
17 California at all relevant times herein.
- 18 4. Defendant KIM SENG COMPANY INC. DBA IHA BEVERAGE (“KIM SENG”) is a
19 California Corporation qualified to do business in California and doing business in the
20 State of California at all relevant times herein.
- 21 5. Defendant RICHIN TRADING, INC., (“RICHIN”) is a California Corporation qualified
22 to do business in California and doing business in the State of California at all relevant
23 times herein.
- 24 6. Defendant WEI-CHUAN U.S.A, INC. (“WEI-CHUAN”) is a California Corporation
25 qualified to do business in California and doing business in the State of California at all
26 relevant times herein.

- 1 7. Defendant GW SUPERMARKET OF ROWLAND HEIGHTS, INC., (“GW
2 ROWLAND”) is a California Corporation qualified to do business in California and
3 doing business in the State of California at all relevant times herein.
- 4 8. Defendant GW SUPERMARKET OF MONTEREY PARK, INC., (“GW
5 MONTEREY”) is a California Corporation qualified to do business in California and
6 doing business in the State of California at all relevant times herein.
- 7 9. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
8 40, and therefore sues these defendants by such fictitious names. Plaintiff will amend
9 this Complaint to allege their true names and capacities when ascertained. Plaintiff is
10 informed, believes, and thereon alleges that each fictitiously named defendant is
11 responsible in some manner for the occurrences herein alleged and the damages caused
12 thereby.
- 13 10. At all times mentioned herein, the term “Defendants” includes GW ROSEMEAD, GW
14 CA, KIM SENG, RICHIN, WEI-CHUAN, CW ROWLAND, GW MONTEREY, and
15 DOES 1-40.
- 16 11. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
17 times mentioned herein have conducted business within the State of California.
- 18 12. Upon information and belief, at all times relevant to this action, each of the Defendants,
19 including DOES 1-40, was an agent, servant, or employee of each of the other
20 Defendants. In conducting the activities alleged in this Complaint, each of the
21 Defendants was acting within the course and scope of this agency, service, or
22 employment, and was acting with the consent, permission, and authorization of each of
23 the other Defendants. All actions of each of the Defendants alleged in this Complaint
24 were ratified and approved by every other Defendant or their officers or managing
25 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
26 the alleged wrongful conduct of each of the other Defendants.
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1 13. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
2 Defendants was a person doing business within the meaning of Health and Safety Code
3 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
4 employees at all relevant times.

5 **JURISDICTION**

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

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

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

23 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

17 20. Proposition 65 provides that any person "violating or threatening to violate" the statute
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
19 25249.7. "Threaten to violate" means "to create a condition in which there is a
20 substantial probability that a violation will occur." *Health & Safety Code* §
21 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day
22 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 21. Plaintiff identified certain practices of manufacturers and distributors of Anchovies,
24 Shrimp and Dried Kelp of exposing, knowingly and intentionally, persons in California
25 to Lead and Lead Compounds (“Lead”), Cadmium and Cadmium Compounds
26 (“Cadmium”), Inorganic Arsenic Oxides and Inorganic Arsenic Compounds in such
27 products without first providing clear and reasonable warnings of such to the exposed
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1 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
2 in such practice.

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

9 23. On February 27, 1987, the Governor of California added Lead to the list of chemicals
10 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
11 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
12 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
13 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
14 the State to cause developmental and reproductive toxicity, Lead became fully subject
15 to Proposition 65 warning requirements and discharge prohibitions.

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

22 25. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
23 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
24 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
25 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
26 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
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1 to the State to cause developmental and reproductive toxicity, Cadmium became fully
2 subject to Proposition 65 warning requirements and discharge prohibitions.

3 26. On February 27, 1987 the Governor of California added Inorganic Arsenic Compounds
4 to the list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, §*
5 *27001(b)*). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
6 (20) months after addition of Inorganic Arsenic Compounds to the list of chemicals
7 known to the State to cause cancer, Inorganic Arsenic Compounds became fully subject
8 to Proposition 65 warning requirements and discharge prohibitions.

9 27. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
10 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs. tit.*
11 *27, § 27001(c)*). Inorganic Arsenic Oxides is known to the State to cause
12 developmental, toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
13 25249.10, twenty (20) months after addition of Inorganic Arsenic Oxides to the list of
14 chemicals known to the State to cause developmental toxicity, Inorganic Arsenic
15 Oxides became fully subject to Proposition 65 warning requirements and discharge
16 prohibitions.

17 28. Inorganic Arsenic Compounds and Inorganic Arsenic Oxides is hereinafter referred to
18 as “Arsenic”.

19 **SATISFACTION OF PRIOR NOTICE**

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

26 30. On or about January 9, 2020, Plaintiff gave notice of alleged violations of Health and
27 Safety Code Section 25249.6, concerning consumer products exposures subject to a
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1 private action to GW ROSEMEAD, GW CA, RICHIN and to the California Attorney
2 General, County District Attorneys, and City Attorneys for each city containing a
3 population of at least 750,000 people in whose jurisdictions the violations allegedly
4 occurred, concerning Anchovies.

5 31. On or about January 16, 2020, Plaintiff gave notice of alleged violations of Health and
6 Safety Code Section 25249.6, concerning consumer products exposures subject to a
7 private action to GW ROSEMEAD, GW CA, WEI-CHUAN, CW ROWLAND, GW
8 MONTEREY, and to the California Attorney General, County District Attorneys, and
9 City Attorneys for each city containing a population of at least 750,000 people in whose
10 jurisdictions the violations allegedly occurred, concerning Dried Shrimp

11 32. On or about March 18, 2020, Plaintiff gave notice of alleged violations of Health and
12 Safety Code Section 25249.6, concerning consumer products exposures subject to a
13 private action to GW CA, GW ROWLAND and to the California Attorney General,
14 County District Attorneys, and City Attorneys for each city containing a population of
15 at least 750,000 people in whose jurisdictions the violations allegedly occurred,
16 concerning Dried Kelp.

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

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

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

7 36. Plaintiff is commencing this action more than sixty (60) days from the dates that
8 Plaintiff gave notice of the alleged violations to GW ROSEMEAD, GW CA, KIM
9 SENG, RICHIN, WEI-CHUAN, CW ROWLAND, GW MONTEREY, and the public
10 prosecutors referenced in Paragraphs 29 to 32.

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

14 **FIRST CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against GW ROSEMEAD,
16 GW CA, KIM SENG, and DOES 1-10 for Violations of Proposition 65, The Safe
17 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§
25249.5, et seq.*))**

18 **Anchovies**

19 38. Plaintiff repeats and incorporates by reference paragraphs 1 through 37 of this
20 complaint as though fully set forth herein.

21 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Anchovies ("Anchovies"), including but not limited
23 to "KOTASHIMA BRAND;" "NET WT: 2.5 OZ (71g);" "KEEP
24 REFRIDGERATED;" "DISTRIBUTOR: KOTASHIMA INTERNATIONAL
25 COMMERCE, CA 90040;" "ING: DRIED ANCHOVY;" "6 10232 04255 8;"

26 40. Anchovies contains Lead and Cadmium.
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1 41. Defendants knew or should have known that Lead and Cadmium has been identified by
2 the State of California as a chemical known to cause cancer and reproductive toxicity
3 and therefore was subject to Proposition 65 warning requirements. Defendants were
4 also informed of the presence of Lead and Cadmium in Anchovies within Plaintiff's
5 notice of alleged violations further discussed above at Paragraph 29.

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

13 43. Plaintiff is informed, believes, and thereon alleges that between December 23, 2016 and
14 the present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Anchovies, which Defendants manufactured, distributed, or
16 sold as mentioned above, to Lead and Cadmium, without first providing any type of
17 clear and reasonable warning of such to the exposed persons before the time of
18 exposure. Defendants have distributed and sold Anchovies in California. Defendants
19 know and intend that California consumers will use and consume Anchovies, thereby
20 exposing them to Lead and Cadmium. Defendants thereby violated Proposition 65.

21 44. The principal routes of exposure are through dermal contact, direct and indirect
22 ingestion and inhalation. Persons sustain exposures by eating and consuming
23 Anchovies and handling Anchovies without wearing gloves or any other personal
24 protective equipment, or by touching bare skin or mucous membranes with gloves after
25 handling Anchovies, as well as through direct and indirect hand to mouth contact, hand
26 to mucous membrane, or breathing in particulate matter dispersed from Anchovies.

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

8 46. 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 47. 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 and Cadmium from Anchovies,
13 pursuant to Health and Safety Code Section 25249.7(b).

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

16 **SECOND CAUSE OF ACTION**

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

21 **Anchovies 2**

22 49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 of this
23 complaint as though fully set forth herein.

24 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Dried Anchovies ("Anchovies 2"), including but not
26 limited to "Richin Dried Anchovy"; "Net Wt: 4oz. (114g)"; "Pack for Richin Trading
27 Inc.;" "UPC 7 15685 13015 6"; "Product of Malaysia"; Lot or batch "QJ 11"

28 51. Anchovies 2 contains Lead and Cadmium.

1 52. Defendants knew or should have known that Lead and Cadmium has been identified by
2 the State of California as a chemical known to cause cancer and reproductive toxicity
3 and therefore was subject to Proposition 65 warning requirements. Defendants were
4 also informed of the presence of Lead and Cadmium in Anchovies 2 within Plaintiff's
5 notice of alleged violations further discussed above at Paragraph 30.

6 53. Plaintiff's allegations regarding Anchovies 2 concerns "[c]onsumer products
7 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
8 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
9 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
10 *25602(b)*. Anchovies 2 are consumer products, and, as mentioned herein, exposures to
11 Lead and Cadmium took place as a result of such normal and foreseeable consumption
12 and use.

13 54. Plaintiff is informed, believes, and thereon alleges that between January 9, 2017 and the
14 present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Anchovies 2, which Defendants manufactured, distributed, or
16 sold as mentioned above, to Lead and Cadmium, without first providing any type of
17 clear and reasonable warning of such to the exposed persons before the time of
18 exposure. Defendants have distributed and sold Anchovies 2 in California. Defendants
19 know and intend that California consumers will use and consume Anchovies 2, thereby
20 exposing them to Lead and Cadmium. Defendants thereby violated Proposition 65.

21 55. The principal routes of exposure are through dermal contact, direct and indirect
22 ingestion and inhalation. Persons sustain exposures by eating and consuming
23 Anchovies 2 and handling Anchovies 2 without wearing gloves or any other personal
24 protective equipment, or by touching bare skin or mucous membranes with gloves after
25 handling Anchovies 2, as well as through direct and indirect hand to mouth contact,
26 hand to mucous membrane, or breathing in particulate matter dispersed from Anchovies
27 2.

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

8 57. 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 58. 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 and Cadmium from Anchovies 2,
13 pursuant to Health and Safety Code Section 25249.7(b).

14 59. 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 GW ROSEMEAD,**
18 **GW CA, WEI-CHUAN, CW ROWLAND, GW MONTEREY, and DOES 21-30**
19 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
20 **Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

21 **Dried Shrimp**

22 60. Plaintiff repeats and incorporates by reference paragraphs 1 through 59 of this
23 complaint as though fully set forth herein.

24 61. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Farm Dried Shrimp ("Shrimp"), including but not
26 limited to "Weichuan"; "Farm Dried Shrimp"; "Net Wt: 3.5 oz (100g)"; "Our products,
27 which are dried farm raised shrimps, have better size, texture and look"; "Distributed
28 by: Wei-Chuan USA Inc."; "UPC 0 72869 23233 5"; "Product of Thailand"

1 62. Shrimp contains Lead.

2 63. Defendants knew or should have known that Lead has been identified by the State of
3 California as a chemical known to cause cancer and reproductive toxicity and therefore
4 was subject to Proposition 65 warning requirements. Defendants were also informed of
5 the presence of Lead in Shrimp within Plaintiff's notice of alleged violations further
6 discussed above at Paragraph 31.

7 64. Plaintiff's allegations regarding Shrimp 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 Shrimp are consumer products, and, as mentioned herein, exposures to Lead took place
12 as a result of such normal and foreseeable consumption and use.

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

21 66. The principal routes of exposure are through dermal contact, direct and indirect
22 ingestion and inhalation. Persons sustain exposures by eating and consuming Shrimp
23 and handling Shrimp without wearing gloves or any other personal protective
24 equipment, or by touching bare skin or mucous membranes with gloves after handling
25 Shrimp, as well as through direct and indirect hand to mouth contact, hand to mucous
26 membrane, or breathing in particulate matter dispersed from Shrimp.

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

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

10 69. Based on the allegations herein, Defendants are liable for civil penalties of up to
11 \$2,500.00 per day per individual exposure to Lead from Shrimp, pursuant to Health and
12 Safety Code Section 25249.7(b).

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

15 **FOURTH CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against GW CA, GW**
17 **ROWLAND and DOES 31-40 for Violations of Proposition 65, The Safe Drinking**
18 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
19 ***seq.*))**

20 **Dried Kelp**

21 71. Plaintiff repeats and incorporates by reference paragraphs 1 through 70 of this
22 complaint as though fully set forth herein.

23 72. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Dried Kelp ("Kelp"), including but not limited to
25 "D.M.D. BRIDGE BRAND;" "Dried Kelp;" "Varech Seche;" "Net Weight / Poids Net:
26 200 g (7oz);" "UNDER THE SUPERVISION OF: KA XING TRADING HONG
27 KONG LIMITED UNIT 2.22/F.AUSTIN PLAZA, 83 AUSTIN ROAD, TSIM SA
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1 TSUI, KOWLOON, HONG KONG;” “Product of China;” “DISTRIBUTED BY:
2 KOWA TRADING CO. MONTEBELLO, CA 90640;” “6 941882 506003;”

3 73. Kelp contains Lead, Cadmium, and Arsenic.

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

9 75. Plaintiff’s allegations regarding Kelp 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 Kelp are consumer products, and, as mentioned herein, exposures to Lead, Cadmium,
14 and Arsenic took place as a result of such normal and foreseeable consumption and use.

15 76. Plaintiff is informed, believes, and thereon alleges that between March 18, 2017 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Kelp, which Defendants manufactured, distributed, or sold as
18 mentioned above, to Lead, Cadmium, and Arsenic, 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 Kelp in California. Defendants know
21 and intend that California consumers will use and consume Kelp, thereby exposing
22 them to Lead, Cadmium, and Arsenic. Defendants thereby violated Proposition 65.

23 77. The principal routes of exposure are through dermal contact, direct and indirect
24 ingestion and inhalation. Persons sustain exposures by eating and consuming Kelp and
25 handling Kelp without wearing gloves or any other personal protective equipment, or by
26 touching bare skin or mucous membranes with gloves after handling Kelp, as well as

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1 through direct and indirect hand to mouth contact, hand to mucous membrane, or
2 breathing in particulate matter dispersed from Kelp.

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

9 79. 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 80. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Lead, Cadmium, and Arsenic from Kelp,
14 pursuant to Health and Safety Code Section 25249.7(b).

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

17 **PRAYER FOR RELIEF**

18 Plaintiff demands against each of the Defendants as follows:

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

24 Dated: June 10, 2020

YEROUSHALMI & YEROUSHALMI*

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

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