

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Holly Fujie

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

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

8 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 MARUKAI CORPORATION DBA TOKYO
16 CENTRAL, a Hawaii Corporation;
and DOES 1-50,

17 Defendants.

CASE NO. **20STCV19170**

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 five causes of action
2 against defendants MARUKAI CORPORATION DBA TOKYO CENTRAL, and DOES 1-50
3 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code Section 25249.7, subdivision (d).
- 10 2. Defendant MARUKAI CORPORATION DBA TOKYO CENTRAL, (“MARUKAI”) is
11 a Hawaii Corporation doing business in the State of California at all relevant times
12 herein.
- 13 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
14 50, and therefore sues these defendants by such fictitious names. Plaintiff will amend
15 this Complaint to allege their true names and capacities when ascertained. Plaintiff is
16 informed, believes, and thereon alleges that each fictitiously named defendant is
17 responsible in some manner for the occurrences herein alleged and the damages caused
18 thereby.
- 19 4. At all times mentioned herein, the term “Defendants” includes MARUKAI and DOES
20 1-50.
- 21 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 6. Upon information and belief, at all times relevant to this action, the Defendants,
24 including DOES 1-50, was an agent, servant, or employee of each of the other
25 Defendant. In conducting the activities alleged in this Complaint, each of the
26 Defendants was acting within the course and scope of this agency, service, or
27 employment, and was acting with the consent, permission, and authorization of each of
28

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
4 the alleged wrongful conduct of each of the other Defendants.

- 5 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, the
6 Defendant 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 8. 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 9. 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
17 in 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 10. 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
25 and/or because Defendants conducted, and continue to conduct, business in the County
26 of Los Angeles with respect to the consumer product that is the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

- 2 11. 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
4 to 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 12. 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
14 over 700 chemicals and chemical families. Proposition 65 imposes warning
15 requirements and other controls that apply to Proposition 65-listed chemicals.
- 16 13. All businesses with ten (10) or more employees that operate or sell products in
17 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
18 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
19 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear
20 and reasonable” warnings before exposing a person, knowingly and intentionally, to a
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 22 14. 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* §
26 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day
27 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 28

- 1 15. Plaintiff identified certain practices of manufacturers and distributors of Seaweed of
2 exposing, knowingly and intentionally, persons in California to Cadmium and Cadmium
3 Compounds (“Cadmium”), Lead and Lead Compounds (“Lead”), Inorganic Arsenic
4 Oxides, and Inorganic Arsenic Compounds, in such products without first providing
5 clear and reasonable warnings of such to the exposed persons prior to the time of
6 exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 7 16. On October 1, 1987, the Governor of California added Cadmium to the list of chemicals
8 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
9 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
10 addition of Cadmium to the list of chemicals known to the State to cause cancer,
11 Cadmium became fully subject to Proposition 65 warning requirements and discharge
12 prohibitions.
- 13 17. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
14 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
15 *Regs.* tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and
16 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
17 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
18 to the State to cause reproductive toxicity, Cadmium became fully subject to
19 Proposition 65 warning requirements and discharge prohibitions.
- 20 18. On October 1, 1992, the Governor of California added Lead to the list of chemicals
21 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
22 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
23 addition of Lead to the list of chemicals known to the State to cause cancer, Lead
24 became fully subject to Proposition 65 warning requirements and discharge
25 prohibitions.
- 26 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals
27 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
28

1 people in whose jurisdictions the violations allegedly occurred, concerning the Roasted
2 Seaweed.

3 24. On or about February 10, 2020 Plaintiff gave notice of alleged violations of Health and
4 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
5 private action to MARUKAI and to the California Attorney General, County District
6 Attorneys, and City Attorneys for each city containing a population of at least 750,000
7 people in whose jurisdictions the violations allegedly occurred, concerning the
8 Seasoned Seaweed.

9 25. Before sending the notice of alleged violations, Plaintiff investigated the consumer
10 products involved, the likelihood that such products would cause users to suffer
11 significant exposures to Cadmium and Lead, and the corporate structure of each of the
12 Defendants.

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

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

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

4 29. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General,
5 nor any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

7
8 **FIRST CAUSE OF ACTION**

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

12 **Seaweed I**

13 30. Plaintiff repeats and incorporates by reference paragraphs 1 through 29 of this
14 complaint as though fully set forth herein.

15 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Roasted Seaweed (“Seaweed I”) including but not
17 limited to: “MARUKAI;” “30;” “TEMAKIYASAN ROASTED SEAWEEED;”
18 “NET:WT.: 1.11oz (31.5g);” “30 Half Cut Sheets;” “PRODUCT OF CHINA;”
19 “DISTRIBUTED BY MARUKAI CORPORATION Gardena, CA 90248;” “6 921100
20 120006;”

21 32. Seaweed I contains Cadmium.

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

27 34. Plaintiff’s allegations regarding Product concerns “[c]onsumer products exposure[s],”
28 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 exposure

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

4 35. Plaintiff is informed, believes, and thereon alleges that between January 9, 2017 and the
5 present, each of the Defendants knowingly and intentionally exposed California
6 consumers and users of Seaweed I, which Defendants manufactured, distributed, or sold
7 as mentioned above, to Cadmium, 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 I in California. Defendants know and
10 intend that California consumers will use and consume Seaweed I, thereby exposing
11 them to Cadmium. Defendants thereby violated Proposition 65.

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

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

1 38. 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 39. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Cadmium from Seaweed I, pursuant to
6 Health and Safety Code Section 25249.7(b).

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

9
10 **SECOND CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against MARUKAI, and**
12 **DOES 11-20 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 I**

15 41. Plaintiff repeats and incorporates by reference paragraphs 1 through 40 of this
16 complaint as though fully set forth herein.

17 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Roasted Seaweed (“Seaweed I”) including but not
19 limited to: “MARUKAI;” “30;” “TEMAKIYASAN ROASTED SEAWEEED;”
20 “NET:WT.: 1.11oz (31.5g);” “30 Half Cut Sheets;” “PRODUCT OF CHINA;”
21 “DISTRIBUTED BY MARUKAI CORPORATION Gardena, CA 90248;” “6 921100
22 120006;”

23 43. Seaweed I contains Lead.

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

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

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

15 47. The principal routes of exposure with regard to Seaweed I are and were through
16 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.
17 Persons sustain exposures primarily by eating and consuming Seaweed I, and
18 additionally by handling Seaweed I without wearing gloves or any other personal
19 protective equipment, or by touching bare skin or mucous membranes with gloves after
20 handling Seaweed I as well as through direct and indirect hand to mouth contact, hand
21 to mucous membrane, or even breathing in particulate matter dispersed from Seaweed I
22 during use, as well as through environmental mediums that carry the Lead once
23 contained within the Seaweed I.

24 48. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
25 of 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 by Seaweed I as mentioned herein.

3 49. 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 50. 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 I, pursuant to Health
8 and Safety Code Section 25249.7(b).

9 51. 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 MARUKAI, and**
13 **DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
14 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

15 **Seaweed I**

16 52. Plaintiff repeats and incorporates by reference paragraphs 1 through 51 of this
17 complaint as though fully set forth herein.

18 53. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Roasted Seaweed (“Seaweed I”) including but not
20 limited to: “MARUKAI;” “30;” “TEMAKIYASAN ROASTED SEAWEED;”
21 “NET:WT.: 1.11oz (31.5g);” “30 Half Cut Sheets;” “PRODUCT OF CHINA;”
22 “DISTRIBUTED BY MARUKAI CORPORATION Gardena, CA 90248;” “6 921100
23 120006;”

24 54. Seaweed I contains Arsenic.

25 55. Defendants knew or should have known that Arsenic has been identified by the State of
26 California as a chemical known to cause cancer, and developmental toxicity and
27 therefore was subject to Proposition 65 warning requirements. Defendants were also
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1 informed of the presence of Arsenic in Seaweed I within Plaintiff's notice of alleged
2 violations further discussed above at Paragraph 23.

3 56. Plaintiff's allegations regarding Product 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 Arsenic took
8 place as a result of such normal and foreseeable consumption and use.

9 57. Plaintiff is informed, believes, and thereon alleges that between January 9, 2017 and the
10 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 Arsenic, 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 I in California. Defendants know and intend that
15 California consumers will use and consume Seaweed I, thereby exposing them to
16 Arsenic. Defendants thereby violated Proposition 65.

17 58. The principal routes of exposure with regard to Seaweed I are and were through
18 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.
19 Persons sustain exposures primarily by eating and consuming Seaweed I, and
20 additionally by handling Seaweed I without wearing gloves or any other personal
21 protective equipment, or by touching bare skin or mucous membranes with gloves after
22 handling Seaweed I as well as through direct and indirect hand to mouth contact, hand
23 to mucous membrane, or even breathing in particulate matter dispersed from Seaweed I
24 during use, as well as through environmental mediums that carry the Arsenic once
25 contained within the Seaweed I.

26 59. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
27 of Proposition 65 as to Seaweed I have been ongoing and continuous, as Defendants
28

1 engaged and continue to engage in conduct which violates Health and Safety Code
2 Section 25249.6, including the manufacture, distribution, promotion, and sale of
3 Seaweed I, so that a separate and distinct violation of Proposition 65 occurred each and
4 every time a person was exposed to Arsenic by Seaweed I as mentioned herein.

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

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

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

13 **FOURTH CAUSE OF ACTION**

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

17 **Seaweed II**

18 63. Plaintiff repeats and incorporates by reference paragraphs 1 through 62 of this
19 complaint as though fully set forth herein.

20 64. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of Seasoned Seaweed (“Seaweed II”) including but not
22 limited to: “Marukai Seasoned Seaweed”; “Net: Wt: 0.53 oz (15g)”; “Ajinori Seaweed”;
23 “3g x 5packs”; “UPC 6 921100 120020”; “Product of China”; “Distributed by Marukai
24 Corporation”

25 65. Seaweed II contains Lead.

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

1 were also informed of the presence of Lead in Seaweed II within Plaintiff's notice of
2 alleged violations further discussed above at Paragraph 24.

3 67. Plaintiff's allegations regarding Product 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 68. Plaintiff is informed, believes, and thereon alleges that between February 10, 2017 and
10 the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Seaweed II, which Defendants manufactured, distributed, or
12 sold as mentioned above, to Lead, 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 II in California. Defendants know and
15 intend that California consumers will use and consume Seaweed II, thereby exposing
16 them to Lead. Defendants thereby violated Proposition 65.

17 69. The principal routes of exposure with regard to Seaweed II are and were through
18 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.
19 Persons sustain exposures primarily by eating and consuming Seaweed II, and
20 additionally by handling Seaweed II without wearing gloves or any other personal
21 protective equipment, or by touching bare skin or mucous membranes with gloves after
22 handling Seaweed II as well as through direct and indirect hand to mouth contact, hand
23 to mucous membrane, or even breathing in particulate matter dispersed from Seaweed II
24 during use, as well as through environmental mediums that carry the Lead once
25 contained within the Seaweed II.

26 70. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
27 of Proposition 65 as to Seaweed II have been ongoing and continuous, as Defendants
28

1 engaged and continue to engage in conduct which violates Health and Safety Code
2 Section 25249.6, including the manufacture, distribution, promotion, and sale of
3 Seaweed II, so that a separate and distinct violation of Proposition 65 occurred each and
4 every time a person was exposed to Lead by Seaweed II as mentioned herein.

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

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

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

13 **FIFTH CAUSE OF ACTION**

14 **(By CONSUMER ADVOCACY GROUP, INC. and against MARUKAI, and**
15 **DOES 41-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
16 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

17 **Seaweed II**

18 74. Plaintiff repeats and incorporates by reference paragraphs 1 through 73 of this
19 complaint as though fully set forth herein.

20 75. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of Seasoned Seaweed (“Seaweed II”) including but not
22 limited to: “Marukai Seasoned Seaweed”; “Net: Wt: 0.53 oz (15g)”; “Ajinori Seaweed”;
23 “3g x 5packs”; “UPC 6 921100 120020”; “Product of China”; “Distributed by Marukai
24 Corporation”

25 76. Seaweed II contains Cadmium.

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

1 were also informed of the presence of Cadmium in Seaweed II within Plaintiff's notice
2 of alleged violations further discussed above at Paragraph 24.

3 78. Plaintiff's allegations regarding Product 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 Cadmium
8 took place as a result of such normal and foreseeable consumption and use.

9 79. Plaintiff is informed, believes, and thereon alleges that between February 10, 2017 and
10 the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Seaweed II, which Defendants manufactured, distributed, or
12 sold as mentioned above, to 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 II in California. Defendants know and
15 intend that California consumers will use and consume Seaweed II, thereby exposing
16 them to Cadmium. Defendants thereby violated Proposition 65.

17 80. The principal routes of exposure with regard to Seaweed II are and were through
18 ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption.
19 Persons sustain exposures primarily by eating and consuming Seaweed II, and
20 additionally by handling Seaweed II without wearing gloves or any other personal
21 protective equipment, or by touching bare skin or mucous membranes with gloves after
22 handling Seaweed II as well as through direct and indirect hand to mouth contact, hand
23 to mucous membrane, or even breathing in particulate matter dispersed from Seaweed II
24 during use, as well as through environmental mediums that carry the Cadmium once
25 contained within the Seaweed II.

26 81. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
27 of Proposition 65 as to Seaweed II have been ongoing and continuous, as Defendants
28

1 engaged and continue to engage in conduct which violates Health and Safety Code
2 Section 25249.6, including the manufacture, distribution, promotion, and sale of
3 Seaweed II, so that a separate and distinct violation of Proposition 65 occurred each and
4 every time a person was exposed to Cadmium by Seaweed II as mentioned herein.

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

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

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

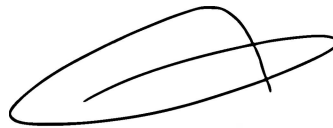
13
14 **PRAYER FOR RELIEF**

15 Plaintiff demands against each of the Defendants as follows:

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

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22 Dated: May 19, 2020

YEROUSHALMI & YEROUSHALMI*

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25 _____
26 Reuben Yeroushalmi
27 Attorneys for Plaintiff,
28 CONSUMER ADVOCACY GROUP, INC.