

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Maureen Duffy-Lewis

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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 THE KROGER CO., a Ohio Corporation;
16 RALPHS GROCERY COMPANY, a Ohio
Corporation;
17 MAVE ENTERPRISES, INC., a Delaware
Corporation;
18 and DOES 1-60,

19 Defendants.

CASE NO. **20STCV27047**

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 THE KROGER CO.; RALPHS GROCERY COMPANY; MAVE ENTERPRISES,
25 INC., and DOES 1-60 as follows:

26 **THE PARTIES**

- 1 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
2 organization qualified to do business in the State of California. CAG is a person within
3 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
4 as a private attorney general, brings this action in the public interest as defined under
5 Health and Safety Code Section 25249.7, subdivision (d).
- 6 2. Defendant THE KROGER CO., (“KROGER”) is an Ohio Corporation; doing business in
7 the State of California at all relevant times herein.
- 8 3. Defendant RALPHS GROCERY COMPANY (“RALPHS”) is an Ohio Corporation;
9 doing business in the State of California at all relevant times herein.
- 10 4. Defendant MAVE ENTERPRISES, INC. (“MAVE”) is a Delaware Corporation doing
11 business in the State of California at all relevant times herein.
- 12 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-60,
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
14 Complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the damages caused
17 thereby.
- 18 6. At all times mentioned herein, the term “Defendants” includes KROGER, RALPHS,
19 MAVE, and DOES 1-60.
- 20 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
21 times mentioned herein have conducted business within the State of California.
- 22 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
23 including DOES 1-60, was an agent, servant, or employee of each of the other
24 Defendants. In conducting the activities alleged in this Complaint, each of the
25 Defendants was acting within the course and scope of this agency, service, or
26 employment, and was acting with the consent, permission, and authorization of each of
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint
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1 were ratified and approved by every other Defendant or their officers or managing
2 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
3 alleged wrongful conduct of each of the other Defendants.

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

8 **JURISDICTION**

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

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

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

26 **BACKGROUND AND PRELIMINARY FACTS**

- 1 13. In 1986, California voters approved an initiative to address growing concerns about
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
7 from contamination, to allow consumers to make informed choices about the products
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see
9 fit.
- 10 14. Proposition 65 requires the Governor of California to publish a list of chemicals known
11 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
12 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
13 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
14 other controls that apply to Proposition 65-listed chemicals.
- 15 15. All businesses with ten (10) or more employees that operate or sell products in California
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
17 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
18 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
19 reasonable” warnings before exposing a person, knowingly and intentionally, to a
20 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 21 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
23 25249.7. "Threaten to violate" means "to create a condition in which there is a
24 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
25 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
26 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
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1 17. Plaintiff identified certain practices of manufacturers and distributors of food products of
2 exposing, knowingly and intentionally, persons in California to Lead and Lead
3 Compounds, Cadmium and Cadmium Compounds, Inorganic Arsenic Compounds,
4 and/or Inorganic Arsenic Oxides) of such products without first providing clear and
5 reasonable warnings of such to the exposed persons prior to the time of exposure.
6 Plaintiff later discerned that Defendants engaged in such practice.

7 18. On October 1, 1992 the Governor of California added Lead and Lead Compounds
8 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
9 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
10 twenty (20) months after addition of Lead to the list of chemicals known to the State to
11 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
12 discharge prohibitions.

13 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals
14 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
15 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
16 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
17 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
18 the State to cause developmental and reproductive toxicity, Lead became fully subject to
19 Proposition 65 warning requirements and discharge prohibitions.

20 20. On October 1, 1987 the Governor of California added Cadmium and Cadmium
21 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
22 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
23 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
24 chemicals known to the State to cause cancer, Cadmium became fully subject to
25 Proposition 65 warning requirements and discharge prohibitions.

26 21. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
27 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
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1 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
2 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
3 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
4 to the State to cause developmental and reproductive toxicity, Cadmium became fully
5 subject to Proposition 65 warning requirements and discharge prohibitions.

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

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

20 **SATISFACTION OF PRIOR NOTICE**

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

- 23 a. On or about January 29, 2020 Plaintiff gave notice of alleged violations of
24 Health and Safety Code Section 25249.6, concerning consumer products
25 exposures subject to a private action to KROGER and to the California Attorney
26 General, County District Attorneys, and City Attorneys for each city containing
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1 a population of at least 750,000 people in whose jurisdictions the violations
2 allegedly occurred, concerning Atlantic Wakame.

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

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

15 d. On or about February 14, 2020 Plaintiff gave notice of alleged violations of
16 Health and Safety Code Section 25249.6, concerning consumer products
17 exposures subject to a private action to KROGER, RALPHS, MAVÉ and to the
18 California Attorney General, County District Attorneys, and City Attorneys for
19 each city containing a population of at least 750,000 people in whose
20 jurisdictions the violations allegedly occurred, concerning Sage.

21 e. On or about March 17, 2020 Plaintiff gave notice of alleged violations of Health
22 and Safety Code Section 25249.6, concerning consumer products exposures
23 subject to a private action to KROGER, and to the California Attorney General,
24 County District Attorneys, and City Attorneys for each city containing a
25 population of at least 750,000 people in whose jurisdictions the violations
26 allegedly occurred, concerning the Roasted Seaweed.

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1 f. On or about March 20, 2020 Plaintiff gave notice of alleged violations of Health
2 and Safety Code Section 25249.6, concerning consumer products exposures
3 subject to a private action to KROGER, and to the California Attorney General,
4 County District Attorneys, and City Attorneys for each city containing a
5 population of at least 750,000 people in whose jurisdictions the violations
6 allegedly occurred, concerning the Seaweed.

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

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

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

24 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
25 gave notice of the alleged violations to KROGER, RALPHS, MAVI and the public
26 prosecutors referenced in Paragraph 24.

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

4 **FIRST CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
6 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
7 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

8 **Seaweed**

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

11 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Atlantic Wakame (“Wakame”), including but not
13 limited to Seaweed Iceland;” “Atlantic WAKAME;” “Product of Iceland;” “RAW;” “Net
14 wt. 1.76oz (50g);” “All Natural;” “No Preservatives;” “Wild Hand Harvested;”
15 “www.seaweed.is;” “Product of Iceland;” “Seaweed Iceland P O Box 24 240
16 Grindavik, Iceland;” “128 19 568;” “BB 05 2021;” “5 694110 026514;”

17 32. Wakame contains Cadmium.

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

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

1 35. Plaintiff is informed, believes, and thereon alleges that between January 29, 2017 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Wakame, which Defendants manufactured, distributed, or sold as
4 mentioned above, to Cadmium, without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold Wakame in California. Defendants know and intend that California
7 consumers will use and consume Wakame, thereby exposing them to Cadmium.
8 Defendants thereby violated Proposition 65.

9 36. The principal routes of exposure are through dermal contact, direct ingestion and
10 inhalation. Persons sustain exposures eating and consuming Wakame and by handling
11 Wakame without wearing gloves or any other personal protective equipment, or by
12 touching bare skin or mucous membranes with gloves after handling Wakame, as well as
13 through direct and indirect hand to mouth contact, hand to mucous membrane, or
14 breathing in particulate matter dispersed from Wakame.

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

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

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

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

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4 **SECOND CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
6 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
7 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

8 **Roasted Seaweed**

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

11 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Roasted Seaweed Snacks (“Seaweed Snacks”),
13 including but not limited to CHIPOTLE seasnax Strangely Addictive!;” “07.10.2020;”
14 “ORGANIC PREMIUM ROASTED SEAWEED SNACK;” “Net Wt 0.54oz (15g);”
15 “Made with 100% olive oil;” “www.seasnax.com;” “SeaSnax 5976 E. Slauson Ave. Los
16 Angeles, CA 90040;” “SS-CHIPOT;” “6 09722 79880 8;” “Product of Korea;”

17 43. Seaweed Snacks contains Cadmium and Lead.

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

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

1 to Cadmium and Lead took place as a result of such normal and foreseeable consumption
2 and use.

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

11 47. The principal routes of exposure are through dermal contact, direct ingestion and
12 inhalation. Persons sustain exposures eating and consuming Seaweed Snacks and by
13 handling Seaweed Snacks without wearing gloves or any other personal protective
14 equipment, or by touching bare skin or mucous membranes with gloves after handling
15 Seaweed Snacks, as well as through direct and indirect hand to mouth contact, hand to
16 mucous membrane, or breathing in particulate matter dispersed from Seaweed Snacks.

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

24 49. 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 50. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Cadmium and Lead from Seaweed Snacks,
3 pursuant to Health and Safety Code Section 25249.7(b).

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

6 **THIRD CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
8 **21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
9 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

10 **Seaweed II**

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

13 53. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Kelp, including but not limited to “Seaweed
15 Iceland”; “Kelp”; “Atlantic Kombu”; “Product of Iceland”; “Net wt. 1.7oz (50g);
16 “RAW”; “All Natural, No Preservatives, Wild Hand Harvested”; “5 694110 026545”;
17 “Product of Iceland”

18 54. Kelp contains Arsenic.

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

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

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1 Kelp is consumer products, and, as mentioned herein, exposures to Arsenic took place as
2 a result of such normal and foreseeable consumption and use.

3 57. Plaintiff is informed, believes, and thereon alleges that between February 14, 2017 and
4 the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Kelp, which Defendants manufactured, distributed, or sold as
6 mentioned above, to Arsenic, 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 Kelp in California. Defendants know and intend that California
9 consumers will use and consume Kelp, thereby exposing them to Arsenic. Defendants
10 thereby violated Proposition 65.

11 58. The principal routes of exposure are through dermal contact, direct ingestion and
12 inhalation. Persons sustain exposures eating and consuming Kelp and by handling Kelp
13 without wearing gloves or any other personal protective equipment, or by touching bare
14 skin or mucous membranes with gloves after handling Kelp, as well as through direct
15 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
16 particulate matter dispersed from Kelp.

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

23 60. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
25 violations alleged herein will continue to occur into the future.
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1 61. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Arsenic from Kelp, pursuant to Health and
3 Safety Code Section 25249.7(b).

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

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7 **FOURTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, RALPHS,**
9 **MAVE and DOES 31-40 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 **Sage**

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

15 64. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Sage, identified as “IT’S Delish;” “SAGE;” “4oz
17 113G PAREVE;” “LOT # 02115779;” “PACKED BY UNIVERSAL MERCHANTS
18 LOS ANGELES, CA 90048;” “WWW.ITSDELISH.COM;” “7 99137 13571 5;”

19 A. The scope of this cause of action is limited to the specific lot number 02115779 of
20 Sage.

21 65. Sage contains Lead.

22 66. Defendants knew or should have known that Lead has been identified by the State of
23 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 Lead in Sage within Plaintiff’s notice of alleged
26 violations further discussed above at Paragraph 24d.

27 67. Plaintiff’s allegations regarding Sage 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 Sage is consumer products, and, as mentioned herein, exposures to Lead took place as a
3 result of such normal and foreseeable consumption and use.

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

12 69. The principal routes of exposure are through dermal contact, direct ingestion and
13 inhalation. Persons sustain exposures eating and consuming Sage and by handling Sage
14 without wearing gloves or any other personal protective equipment, or by touching bare
15 skin or mucous membranes with gloves after handling Sage, as well as through direct
16 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
17 particulate matter dispersed from Sage.

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

24 71. 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 72. 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 Sage, pursuant to Health and
3 Safety Code Section 25249.7(b).

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

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7 **FIFTH CAUSE OF ACTION**

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

11 **Roasted Seaweed II**

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

14 75. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Roasted Seaweed (“Roasted Seaweed”), including
16 but not limited to "THE ORIGINAL seasnax Strangely Addictive!;" “Made with 100%
17 olive oil;” “05.29.2020;” “Naturally Delicious! We make SeaSnax as if our own kids eat
18 them – because they do!;” “ORGANIC PREMIUM ROASTED SEAWEED SNACK;”
19 “Net Wt 0.54oz (15g);” “www.seasnax.com;” “SeaSnax 5976 E. Slauson Ave. Los
20 Angeles, CA 90040;” “Product of Korea;” “SS-CLASS;” “7 28028 01220 0;”

21 76. Roasted Seaweed contains Cadmium and Lead.

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

28 78. Plaintiff’s allegations regarding Roasted Seaweed concerns “[c]onsumer products
exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
2 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
3 *25602(b)*. Roasted Seaweed is consumer products, and, as mentioned herein, exposures
4 to Cadmium and Lead took place as a result of such normal and foreseeable consumption
5 and use.

6 79. Plaintiff is informed, believes, and thereon alleges that between March 17, 2017 and the
7 present, each of the Defendants knowingly and intentionally exposed California
8 consumers and users of Roasted Seaweed, which Defendants manufactured, distributed,
9 or sold as mentioned above, to Cadmium and Lead, without first providing any type of
10 clear and reasonable warning of such to the exposed persons before the time of exposure.
11 Defendants have distributed and sold Roasted Seaweed in California. Defendants know
12 and intend that California consumers will use and consume Roasted Seaweed, thereby
13 exposing them to Cadmium and Lead. Defendants thereby violated Proposition 65.

14 80. The principal routes of exposure are through dermal contact, direct ingestion and
15 inhalation. Persons sustain exposures eating and consuming Roasted Seaweed and by
16 handling Roasted Seaweed without wearing gloves or any other personal protective
17 equipment, or by touching bare skin or mucous membranes with gloves after handling
18 Roasted Seaweed, as well as through direct and indirect hand to mouth contact, hand to
19 mucous membrane, or breathing in particulate matter dispersed from Roasted Seaweed.

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

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1 82. 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 83. 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 and Lead from Roasted
6 Seaweed, pursuant to Health and Safety Code Section 25249.7(b).

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

9
10 **SIXTH CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
12 **51-60 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 III**

15 85. Plaintiff repeats and incorporates by reference paragraphs 1 through 84 of this complaint
16 as though fully set forth herein.

17 86. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Seaweed ("Seaweed"), including but not limited to "
19 seasnax;" "06.07.2021;" "Strangely Addictive!;" "Organic Seaweed;" "Net Wt 28 g
20 (1.0oz);" "10 Large Sheets;" "www.seasnax.com;" "Product of Korea;" "SS-RAW;"
21 "SeaSnax 5976 E. Slauson Ave. Los Angeles, CA 90040 (310) 882-5503;" "7 28028
22 02323 7"

23 87. Seaweed contains Cadmium and Lead.

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

1 89. Plaintiff’s allegations regarding Seaweed 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 Roasted Seaweed is consumer products, and, as mentioned herein, exposures to
6 Cadmium and Lead took place as a result of such normal and foreseeable consumption
7 and use.

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

16 91. The principal routes of exposure are through dermal contact, direct ingestion and
17 inhalation. Persons sustain exposures eating and consuming Seaweed and by handling
18 Seaweed without wearing gloves or any other personal protective equipment, or by
19 touching bare skin or mucous membranes with gloves after handling Seaweed, as well as
20 through direct and indirect hand to mouth contact, hand to mucous membrane, or
21 breathing in particulate matter dispersed from Seaweed.

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

28

1 93. 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 94. 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 and Lead from Seaweed,
6 pursuant to Health and Safety Code Section 25249.7(b).

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

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11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

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

18
19 Dated: July 16, 2020

YEROUSHALMI & YEROUSHALMI*

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21 

22 _____
23 Reuben Yeroushalmi
24 Attorneys for Plaintiff,
25 CONSUMER ADVOCACY GROUP, INC.