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9 CONSUMER ADVOCACY GROUP, INC.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 CONSUMER ADVOCACY GROUP, INC.,
14 in the public interest,

15 Plaintiff,

16 v.

17 THE KROGER CO., a Ohio Corporation;
18 AIVA PRODUCTS LLC, a Texas Limited
19 Liability Company; and
20 and DOES 1-70,

21 Defendants.

CASE NO. **23STCV20542**

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)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges seven causes of action
23 against defendants THE KROGER CO.; AIVA PRODUCTS LLC and DOES 1-70 as follows:

24 **THE PARTIES**

- 25 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
26 organization qualified to do business in the State of California. CAG is a person within
27 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
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1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code Section 25249.7, subdivision (d).

3 2. Defendant THE KROGER CO., (“KROGER”) is a Ohio Corporation doing business in
4 the State of California at all relevant times herein.

5 3. Defendant AIVA PRODUCTS LLC, (“AIVA”) is a Texas Limited Liability Company
6 doing business in the State of California at all relevant times herein.

7 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-70,
8 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
9 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 5. At all times mentioned herein, the term “Defendants” includes KROGER, AIVA and
14 DOES 1-70.

15 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
16 times mentioned herein have conducted business within the State of California.

17 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
18 including DOES 1-70, was an agent, servant, or employee of each of the other
19 Defendants. In conducting the activities alleged in this Complaint, each of the
20 Defendants was acting within the course and scope of this agency, service, or
21 employment, and was acting with the consent, permission, and authorization of each of
22 the other Defendants. All actions of each of the Defendants alleged in this Complaint
23 were ratified and approved by every other Defendant or their officers or managing
24 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
25 alleged wrongful conduct of each of the other Defendants.

26 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
27 Defendants was a person doing business within the meaning of Health and Safety Code
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1 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
2 employees at all relevant times.

3 **JURISDICTION**

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

21 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

21 16. Plaintiff identified certain practices of manufacturers and distributors of food products of
22 exposing, knowingly and intentionally, persons in California to Lead and Lead
23 Compounds, Cadmium and Cadmium Compounds, and Inorganic Arsenic Oxides of
24 such products without first providing clear and reasonable warnings of such to the
25 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants
26 engaged in such practice.

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

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

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

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

1 21. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
2 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
3 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
4 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
5 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
6 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
7 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
8 Oxides is hereinafter referred to as “Arsenic”.

9 **SATISFACTION OF PRIOR NOTICE**

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

- 12 a. On or about January 29, 2020, Plaintiff gave notice of alleged violations of
13 Health and Safety Code Section 25249.6, concerning consumer products
14 exposures subject to a private action to KROGER, and to the California
15 Attorney General, County District Attorneys, and City Attorneys for each city
16 containing a population of at least 750,000 people in whose jurisdictions the
17 violations allegedly occurred, concerning the Atlantic Wakame.
- 18 b. On or about February 10, 2020, Plaintiff gave notice of alleged violations of
19 Health and Safety Code Section 25249.6, concerning consumer products
20 exposures subject to a private action to KROGER, and to the California
21 Attorney General, County District Attorneys, and City Attorneys for each city
22 containing a population of at least 750,000 people in whose jurisdictions the
23 violations allegedly occurred, concerning the Roasted Seaweed Snacks.
- 24 c. On or about February 14, 2020, Plaintiff gave notice of alleged violations of
25 Health and Safety Code Section 25249.6, concerning consumer products
26 exposures subject to a private action to KROGER, and to the California
27 Attorney General, County District Attorneys, and City Attorneys for each city

1 containing a population of at least 750,000 people in whose jurisdictions the
2 violations allegedly occurred, concerning the Kelp.

- 3 d. On or about March 17, 2022, 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 the Roasted Seaweeds.
- 9 e. On or about March 20, 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 the Seaweeds.
- 15 f. On or about November 20, 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, and to the California
18 Attorney General, County District Attorneys, and City Attorneys for each city
19 containing a population of at least 750,000 people in whose jurisdictions the
20 violations allegedly occurred, concerning the Organic Seaweed.
- 21 g. On or about October 25, 2022, Plaintiff gave notice of alleged violations of
22 Health and Safety Code Section 25249.6, concerning consumer products
23 exposures subject to a private action to KROGER, AIVA, and to the California
24 Attorney General, County District Attorneys, and City Attorneys for each city
25 containing a population of at least 750,000 people in whose jurisdictions the
26 violations allegedly occurred, concerning the Shitake Mushrooms.

1 23. Before sending the notice of alleged violations, Plaintiff investigated the consumer
2 products involved, the likelihood that such products would cause users to suffer
3 significant exposures to Lead, Cadmium, Arsenic, and the corporate structure of each of
4 the Defendants.

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

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

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

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

24 **FIRST CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
26 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
27 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

28 **Seaweed I**

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

3 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Atlantic Wakame, including but not limited to
5 •“Seaweed Iceland;” “Atlantic WAKAME;” “Product of Iceland;” “RAW;” “Net wt.
6 1.76oz (50g);” “All Natural;” “No Preservatives;” “Wild Hand Harvested;”
7 “www.seaweed.is;” “Product of Iceland;” “Seaweed Iceland P O Box 24 240
8 Grindavik, Iceland;” “128 19 568;” “BB 05 2021;” “5 694110 026514;”.

9 30. Atlantic Wakame contains Cadmium.

10 31. Defendants knew or should have known that Cadmium has been identified by the State
11 of California as a chemical known to cause cancer, and reproductive toxicity and
12 therefore was subject to Proposition 65 warning requirements. Defendants were also
13 informed of the presence of Cadmium in Atlantic Wakame within Plaintiff’s notice of
14 alleged violations further discussed above at Paragraph 22a.

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

21 33. Plaintiff is informed, believes, and thereon alleges that between January 29, 2017 and the
22 present, each of the Defendants knowingly and intentionally exposed California
23 consumers and users of Atlantic Wakame, which Defendants manufactured, distributed,
24 or sold as mentioned above, to Cadmium, without first providing any type of clear and
25 reasonable warning of such to the exposed persons before the time of exposure.
26 Defendants have distributed and sold Atlantic Wakame in California. Defendants know
27 and intend that California consumers will use and consume Atlantic Wakame, thereby

1 exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
2 that Defendants are selling Atlantic Wakame under a brand or trademark that is owned or
3 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
4 Cadmium into product or knowingly caused Cadmium to be created in Atlantic Wakame;
5 have covered, obscured or altered a warning label that has been affixed to Atlantic
6 Wakame by the manufacturer, producer, packager, importer, supplier or distributor of
7 Atlantic Wakame; have received a notice and warning materials for exposure from
8 Atlantic Wakame without conspicuously posting or displaying the warning materials;
9 and/or have actual knowledge of potential exposure to Cadmium from Atlantic Wakame.
10 Defendants thereby violated Proposition 65.

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

17 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
18 Proposition 65 as to Atlantic Wakame 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 Atlantic
21 Wakame, so that a separate and distinct violation of Proposition 65 occurred each and
22 every time a person was exposed to Cadmium by Atlantic Wakame as mentioned herein.

23 36. 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 37. 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 from Atlantic Wakame, pursuant
3 to Health and Safety Code Section 25249.7(b).

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

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7 **SECOND CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
9 **11-20 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 Seaweeds I**

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

14 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Roasted Seaweed Snacks (“Seaweeds”), including but
16 not limited to • “CHIPOTLE seasnax Strangely Addictive!;” “07.10.2020;” “ORGANIC
17 PREMIUM ROASTED SEAWEEED SNACK;” “Net Wt 0.54oz (15g);” “Made with
18 100% olive oil;” “www.seasnax.com;” “SeaSnax 5976 E. Slauson Ave. Los Angeles, CA
19 90040;” “SS-CHIPOT;” “6 09722 79880 8;” “Product of Korea;”.

20 41. Seaweeds contains Lead and Cadmium.

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

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

1 Seaweeds are consumer products, and, as mentioned herein, exposures to Lead and
2 Cadmium took place as a result of such normal and foreseeable consumption and use.

3 44. 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 Seaweeds, which Defendants manufactured, distributed, or sold
6 as mentioned above, to Lead and Cadmium, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold Seaweeds in California. Defendants know and
9 intend that California consumers will use and consume Seaweeds, thereby exposing them
10 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
11 Defendants are selling Seaweeds under a brand or trademark that is owned or licensed by
12 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
13 Cadmium into product or knowingly caused Lead and Cadmium to be created in
14 Seaweeds; have covered, obscured or altered a warning label that has been affixed to
15 Seaweeds by the manufacturer, producer, packager, importer, supplier or distributor of
16 Seaweeds; have received a notice and warning materials for exposure from Seaweeds
17 without conspicuously posting or displaying the warning materials; and/or have actual
18 knowledge of potential exposure to Lead and Cadmium from Seaweeds. Defendants
19 thereby violated Proposition 65.

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

26 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to Seaweeds have been ongoing and continuous, as Defendants
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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 Seaweeds, so that a separate and distinct violation of Proposition 65 occurred each and
4 every time a person was exposed to Lead and Cadmium by Seaweeds as mentioned
5 herein.

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

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

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

14 **THIRD CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
16 **21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
17 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

18 **Kelp**

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

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

26 52. Kelp contains Arsenic.

27 53. Defendants knew or should have known that Arsenic has been identified by the State of
28 California as a chemical known to cause developmental toxicity and therefore was

1 subject to Proposition 65 warning requirements. Defendants were also informed of the
2 presence of Arsenic in Kelp within Plaintiff's notice of alleged violations further
3 discussed above at Paragraph 22c.

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

10 55. Plaintiff is informed, believes, and thereon alleges that between February 14, 2017 and
11 the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Kelp, which Defendants manufactured, distributed, or sold as
13 mentioned above, to Arsenic, without first providing any type of clear and reasonable
14 warning of such to the exposed persons before the time of exposure. Defendants have
15 distributed and sold Kelp in California. Defendants know and intend that California
16 consumers will use and consume Kelp, thereby exposing them to Arsenic. Further,
17 Plaintiff is informed, believes, and thereon alleges that Defendants are selling Kelp under
18 a brand or trademark that is owned or licensed by the Defendants or an entity affiliated
19 thereto; have knowingly introduced Arsenic into product or knowingly caused Arsenic to
20 be created in Kelp; have covered, obscured or altered a warning label that has been
21 affixed to Kelp by the manufacturer, producer, packager, importer, supplier or distributor
22 of Kelp; have received a notice and warning materials for exposure from Kelp without
23 conspicuously posting or displaying the warning materials; and/or have actual
24 knowledge of potential exposure to Arsenic from Kelp. Defendants thereby violated
25 Proposition 65.

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
20 **31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
21 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

22 **Roasted Seaweeds II**

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

25 62. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of Roasted Seaweeds ("Seaweeds"), including but not
27 limited to "THE ORIGINAL seasnax Strangely Addictive!;" "Made with 100% olive
28 oil;" "05.29.2020;" "Naturally Delicious! We make SeaSnax as if our own kids eat them

1 – because they do!;” “ORGANIC PREMIUM ROASTED SEAWEED SNACK;” “Net
2 Wt 0.54oz (15g);” “www.seasnax.com;” “SeaSnax 5976 E. Slauson Ave. Los Angeles,
3 CA 90040;” “Product of Korea;” “SS-CLASS;” “7 28028 01220 0;”.

4 63. Seaweeds contains Lead and Cadmium.

5 64. Defendants knew or should have known that Lead and Cadmium has been identified by
6 the State of California as a chemical known to cause cancer, and reproductive toxicity
7 and therefore was subject to Proposition 65 warning requirements. Defendants were also
8 informed of the presence of Lead and Cadmium in Seaweeds within Plaintiff’s notice of
9 alleged violations further discussed above at Paragraph 22d.

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

16 66. Plaintiff is informed, believes, and thereon alleges that between March 17, 2017 and the
17 present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Seaweeds, which Defendants manufactured, distributed, or sold
19 as mentioned above, to Lead and Cadmium, without first providing any type of clear and
20 reasonable warning of such to the exposed persons before the time of exposure.
21 Defendants have distributed and sold Seaweeds in California. Defendants know and
22 intend that California consumers will use and consume Seaweeds, thereby exposing them
23 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
24 Defendants are selling Seaweeds under a brand or trademark that is owned or licensed by
25 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
26 Cadmium into product or knowingly caused Lead and Cadmium to be created in
27 Seaweeds; have covered, obscured or altered a warning label that has been affixed to
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1 Seaweeds by the manufacturer, producer, packager, importer, supplier or distributor of
2 Seaweeds; have received a notice and warning materials for exposure from Seaweeds
3 without conspicuously posting or displaying the warning materials; and/or have actual
4 knowledge of potential exposure to Lead and Cadmium from Seaweeds. Defendants
5 thereby violated Proposition 65.

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

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, and DOES**
3 **41-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Seaweed II**

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

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

13 74. Seaweeds contains Lead and Cadmium.

14 75. Defendants knew or should have known that Lead and Cadmium has been identified by
15 the State of California as a chemical known to cause cancer, and reproductive toxicity
16 and therefore was subject to Proposition 65 warning requirements. Defendants were also
17 informed of the presence of Lead and Cadmium in Seaweeds within Plaintiff’s notice of
18 alleged violations further discussed above at Paragraph 22e.

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

25 77. Plaintiff is informed, believes, and thereon alleges that between March 20, 2017 and the
26 present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Seaweeds, which Defendants manufactured, distributed, or sold
28 as mentioned above, to Lead and Cadmium, without first providing any type of clear and

1 reasonable warning of such to the exposed persons before the time of exposure.
2 Defendants have distributed and sold Seaweeds in California. Defendants know and
3 intend that California consumers will use and consume Seaweeds, thereby exposing them
4 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
5 Defendants are selling Seaweeds under a brand or trademark that is owned or licensed by
6 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
7 Cadmium into product or knowingly caused Lead and Cadmium to be created in
8 Seaweeds; have covered, obscured or altered a warning label that has been affixed to
9 Seaweeds by the manufacturer, producer, packager, importer, supplier or distributor of
10 Seaweeds; have received a notice and warning materials for exposure from Seaweeds
11 without conspicuously posting or displaying the warning materials; and/or have actual
12 knowledge of potential exposure to Lead and Cadmium from Seaweeds. Defendants
13 thereby violated Proposition 65.

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

20 79. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
21 Proposition 65 as to Seaweeds 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
24 Seaweeds, so that a separate and distinct violation of Proposition 65 occurred each and
25 every time a person was exposed to Lead and Cadmium by Seaweeds as mentioned
26 herein.

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1 80. 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 81. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Lead and Cadmium from Seaweeds,
6 pursuant to Health and Safety Code Section 25249.7(b).

7 82. 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 83. Plaintiff repeats and incorporates by reference paragraphs 1 through 82 of this complaint
16 as though fully set forth herein.

17 84. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Organic Seaweed ("Seaweed"), including but not
19 limited to • "Seasnax ® Strangely Addictive"; "Organic Premium Roasted Seaweed
20 Snack"; "Original" "Net Wt. 0.54 oz (15g); "SS-CLASS"; "UPC 7 28028 01220 0";
21 "Product of Korea";

22 • "Seasnax ® Strangely Addictive"; "Organic Seaweed"; "Vegan"; "RAW"; "Net Wt.
23 28g (1.0 oz)"; "SS-RAW"; "UPC 7 28028 02323 7"; "Product of Korea".

24 85. Seaweed contains Lead and Cadmium.

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

1 87. 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 Seaweed ia consumer products, and, as mentioned herein, exposures to Lead and
6 Cadmium took place as a result of such normal and foreseeable consumption and use.

7 88. Plaintiff is informed, believes, and thereon alleges that between November 20, 2017 and
8 the present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
10 mentioned above, to Lead and Cadmium, without first providing any type of clear and
11 reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold Seaweed in California. Defendants know and
13 intend that California consumers will use and consume Seaweed, thereby exposing them
14 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
15 Defendants are selling Seaweed under a brand or trademark that is owned or licensed by
16 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
17 Cadmium into product or knowingly caused Lead and Cadmium to be created in
18 Seaweed; have covered, obscured or altered a warning label that has been affixed to
19 Seaweed by the manufacturer, producer, packager, importer, supplier or distributor of
20 Seaweed; have received a notice and warning materials for exposure from Seaweed
21 without conspicuously posting or displaying the warning materials; and/or have actual
22 knowledge of potential exposure to Lead and Cadmium from Seaweed. Defendants
23 thereby violated Proposition 65.

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

3 90. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to Seaweed 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 Seaweed, so
7 that a separate and distinct violation of Proposition 65 occurred each and every time a
8 person was exposed to Lead and Cadmium by Seaweed as mentioned herein.

9 91. 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 92. 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 and Cadmium from Seaweed,
14 pursuant to Health and Safety Code Section 25249.7(b).

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

17 **SEVENTH CAUSE OF ACTION**

18 **(By CONSUMER ADVOCACY GROUP, INC. and against KROGER, AIVA, and**
19 **DOES 61-70 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
20 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

21 **Mushrooms**

22 94. Plaintiff repeats and incorporates by reference paragraphs 1 through 93 of this complaint
23 as though fully set forth herein.

24 95. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Shitake Mushrooms, including but not limited to
26 "Aiva We Believe In Quality"; "Shitake Mushroom"; "Net Wt. 3.5 oz"; "Best Before
27 July 2023"; "Distributed By Aiva Products".

28 96. Shitake Mushrooms contains Cadmium.

1 97. Defendants knew or should have known that Cadmium has been identified by the State
2 of California as a chemical known to cause cancer, and reproductive toxicity and
3 therefore was subject to Proposition 65 warning requirements. Defendants were also
4 informed of the presence of Cadmium in Shitake Mushrooms within Plaintiff's notice of
5 alleged violations further discussed above at Paragraph 22g.

6 98. Plaintiff's allegations regarding Shitake Mushrooms 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)*. Shitake Mushrooms are consumer products, and, as mentioned herein,
11 exposures to Cadmium took place as a result of such normal and foreseeable
12 consumption and use.

13 99. Plaintiff is informed, believes, and thereon alleges that between October 25, 2019 and
14 the present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Shitake Mushrooms, which Defendants manufactured,
16 distributed, or sold as mentioned above, to Cadmium, without first providing any type of
17 clear and reasonable warning of such to the exposed persons before the time of exposure.
18 Defendants have distributed and sold Shitake Mushrooms in California. Defendants
19 know and intend that California consumers will use and consume Shitake Mushrooms,
20 thereby exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon
21 alleges that Defendants are selling Shitake Mushrooms under a brand or trademark that
22 is owned or licensed by the Defendants or an entity affiliated thereto; have knowingly
23 introduced Cadmium into product or knowingly caused Cadmium to be created in
24 Shitake Mushrooms; have covered, obscured or altered a warning label that has been
25 affixed to Shitake Mushrooms by the manufacturer, producer, packager, importer,
26 supplier or distributor of Shitake Mushrooms; have received a notice and warning
27 materials for exposure from Shitake Mushrooms without conspicuously posting or
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1 displaying the warning materials; and/or have actual knowledge of potential exposure to
2 Cadmium from Shitake Mushrooms. Defendants thereby violated Proposition 65.

3 100. The principal routes of exposure are through ingestion. Persons sustain exposures by
4 eating and consuming Shitake Mushrooms and handling without wearing gloves or any
5 other personal protective equipment, or by touching bare skin or mucous membranes
6 with gloves after handling Shitake Mushrooms, as well as through direct and indirect
7 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter
8 dispersed from Shitake Mushrooms.

9 101. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
10 of Proposition 65 as to Shitake Mushrooms have been ongoing and continuous, as
11 Defendants engaged and continue to engage in conduct which violates Health and Safety
12 Code Section 25249.6, including the manufacture, distribution, promotion, and sale of
13 Shitake Mushrooms, so that a separate and distinct violation of Proposition 65 occurred
14 each and every time a person was exposed to Cadmium by Shitake Mushrooms as
15 mentioned herein.

16 102. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
18 violations alleged herein will continue to occur into the future.

19 103. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Cadmium from Shitake Mushrooms,
21 pursuant to Health and Safety Code Section 25249.7(b).

22 104. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
23 filing this Complaint.

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1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

3 105. A permanent injunction mandating Proposition 65-compliant warnings;

4 106. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);

5 107. Costs of suit;

6 108. Reasonable attorney fees and costs; and

7 109. Any further relief that the court may deem just and equitable.

8
9 Dated: August 25, 2023

YEROUSHALMI & YEROUSHALMI*

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11 *Reuben Yeroushalmi*

12 _____
13 Reuben Yeroushalmi
14 Attorneys for Plaintiff,
15 CONSUMER ADVOCACY GROUP, INC.
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