

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Meiers

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

13 Plaintiff,

14 v.

15 TRANSOCEAN RESOURCES
16 MANAGEMENT, INC. DBA YAMIBUY, a
17 Delaware Corporation;
18 WISMETTAC ASIAN FOODS, INC., a
19 California Corporation;
and DOES 1-10,

20 Defendants.

CASE NO. ~~20STCV43211~~

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 a cause of action against
24 defendants TRANSOCEAN RESOURCES MANAGEMENT, INC. DBA YAMIBUY,
25 WISMETTAC ASIAN FOODS, INC., and DOES 1-10 as follows:
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THE PARTIES

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

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

9 **JURISDICTION**

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

27 **BACKGROUND AND PRELIMINARY FACTS**

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

12 **SATISFACTION OF PRIOR NOTICE**

13 22. Plaintiff served the following notice for alleged violations of Health and Safety Code
14 Section 25249.6, concerning consumer products exposures:

15 a. On or about February 12, 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 TRANSOCEAN, WISMETTAC, and to
18 the California Attorney General, County District Attorneys, and City Attorneys
19 for each city containing a population of at least 750,000 people in whose
20 jurisdictions the violations allegedly occurred, concerning the Roasted Seaweed.

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

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

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

11 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
12 gave notice of the alleged violations to TRANSOCEAN, WISMETTAC, and the public
13 prosecutors referenced in Paragraph 22.

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

17 **FIRST CAUSE OF ACTION**

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

22 **Seaweed**

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

25 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of Roasted Seaweed ("Seaweed"), including but not
27 limited to "Shirakiku Brand"; "Roasted Seaweed"; "Roasted in a traditional way with
28 Anti-oxidant Rosemary oil"; "The freshest seaweed from Korea"; "Premium Korean

1 Seaweed”; “Roasted in U.S.A”; “Net Wt. 0.14 oz (4g); “Gluten Free”; “Item#49054”;
2 “UPC 0 74410 49054 6”; “Distributed by Wismetttac Asian Foods, Inc.”

3 30. Seaweed contains Lead, Cadmium, and Arsenic.

4 31. Defendants knew or should have known that Lead, Cadmium, and Arsenic has been
5 identified by the State of California as a chemical known to cause cancer, and
6 reproductive toxicity therefore was subject to Proposition 65 warning requirements.

7 Defendants were also informed of the presence of Lead, Cadmium, and Arsenic in
8 Seaweed within Plaintiff’s notice of alleged violations further discussed above at
9 Paragraph 22a.

10 32. Plaintiff’s allegations regarding Seaweed 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 Seaweed is a consumer product, and, as mentioned herein, exposures to Lead, Cadmium,
15 and Arsenic took place as a result of such normal and foreseeable consumption and use.

16 33. Plaintiff is informed, believes, and thereon alleges that between February 12, 2017 and
17 the present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
19 mentioned above, to Lead, Cadmium, and Arsenic, without first providing any type of
20 clear and reasonable warning of such to the exposed persons before the time of exposure.

21 Defendants have distributed and sold Seaweed in California. Defendants know and
22 intend that California consumers will use and consume Seaweed, thereby exposing them
23 to Lead, Cadmium, and Arsenic. Defendants thereby violated Proposition 65.

24 34. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by handling Seaweed 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 35. 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, Cadmium, and Arsenic by Seaweed as mentioned herein.

9 36. 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 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Lead, Cadmium, and Arsenic from
14 Seaweed, pursuant to Health and Safety Code Section 25249.7(b).

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

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18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

- 20 39. A permanent injunction mandating Proposition 65-compliant warnings;
21 40. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
22 41. Costs of suit;
23 42. Reasonable attorney fees and costs; and
24 43. Any further relief that the court may deem just and equitable.

1 Dated: November 6, 2020

YEROUSHALMI & YEROUSHALMI*

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6 Reuben Yeroushalmi
7 Attorneys for Plaintiff,
8 CONSUMER ADVOCACY GROUP, INC.
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