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8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 GREEN FARM MARKET, a Business Entity
17 Form Unknown;
18 and DOES 1-10,

19 Defendants.

20 CASE NO. **20STCV43207**

21 Violation of Proposition 65, the Safe
22 Drinking Water and Toxic Enforcement
23 Act of 1986 (*Health & Safety Code*, §
24 25249.5, *et seq.*)

25 ACTION IS AN UNLIMITED CIVIL
26 CASE (exceeds \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 defendants GREEN FARM MARKET and DOES 1-10 as follows:

3 **THE PARTIES**

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

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

7 **JURISDICTION**

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

25 **BACKGROUND AND PRELIMINARY FACTS**

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

8 12. Proposition 65 requires the Governor of California to publish a list of chemicals known
9 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
10 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
11 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
12 other controls that apply to Proposition 65-listed chemicals.

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

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

25 15. Plaintiff identified certain practices of manufacturers and distributors of Dried Seaweeds
26 of exposing, knowingly and intentionally, persons in California to Lead and Lead
27 Compounds, Cadmium and Cadmium Compounds, Inorganic Arsenic Compounds,
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1 and/or Inorganic Arsenic Oxides of such products without first providing clear and
2 reasonable warnings of such to the exposed persons prior to the time of exposure.

3 Plaintiff later discerned that Defendants engaged in such practice.

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

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

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

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

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

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

17 **SATISFACTION OF PRIOR NOTICE**

18 22. On or about May 11, 2020, Plaintiff gave notice of alleged violations of Health and
19 Safety Code Section 25249.6, concerning consumer products exposures subject to a
20 private action to GREEN FARM and to the California Attorney General, County District
21 Attorneys, and City Attorneys for each city containing a population of at least 750,000
22 people in whose jurisdictions the violations allegedly occurred, concerning Dried
23 Seaweeds.

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

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

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

14 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
15 gave notice of the alleged violations to GREEN FARM and the public prosecutors
16 referenced in Paragraph 22.

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

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21 **FIRST CAUSE OF ACTION**

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

25 **Dried Seaweeds**

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

28 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Dried Seaweeds ("Seaweeds"), including, but not

1 limited to: "B & C;" "DRIED SEAWEEDS;" "IMPORTED BY: B&C FOOD CO.
2 11264 ½ E. Rush St. South El Monte, CA 91733;" "PRODUCT OF CHINA;" "6 920423
3 929761;" "Consume Before: 04 08 2019;"

4 30. Seaweeds contain Lead, Cadmium, and Arsenic.

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

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

18 33. Plaintiff is informed, believes, and thereon alleges that between May 11, 2017 and the
19 present, each of the Defendants knowingly and intentionally exposed California
20 consumers and users of Seaweeds, which Defendants manufactured, distributed, or sold
21 as mentioned above, to Lead, Cadmium, and Arsenic, without first providing any type of
22 clear and reasonable warning of such to the exposed persons before the time of exposure.
23 Defendants have distributed and sold Seaweeds in California. Defendants know and
24 intend that California consumers will use and consume Seaweeds, thereby exposing them
25 to Lead, Cadmium, and Arsenic. Defendants thereby violated Proposition 65.

26 34. The principal routes of exposure are through dermal contact, ingestion and inhalation.
27 Persons sustain exposures by handling Seaweeds without wearing gloves or any other
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1 personal protective equipment, or by touching bare skin or mucous membranes with
2 gloves after handling Seaweeds, as well as through direct and indirect hand to mouth
3 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
4 Seaweeds during use, as well as through environmental mediums that carry the Lead,
5 Cadmium, and Arsenic once contained within the Seaweeds.

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

13 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur into the future.

16 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to Lead, Cadmium, and Arsenic from
18 Seaweeds, pursuant to Health and Safety Code Section 25249.7(b).

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

21 **PRAYER FOR RELIEF**

22 Plaintiff demands against each of the Defendants as follows:

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

1 Dated: November 10, 2020

YEROUSHALMI & YEROUSHALMI*

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