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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 TAKAOKAYA U.S.A., INC., a California
17 Corporation;
18 CALIFORNIA MARKETPLACE, INC., a
19 California Corporation;
20 and DOES 1-40,

21 Defendants.

22 CASE NO. **20STCV38763**

23 COMPLAINT FOR PENALTY AND
24 INJUNCTION

25 Violation of Proposition 65, the Safe
26 Drinking Water and Toxic Enforcement
27 Act of 1986 (*Health & Safety Code, §*
28 *25249.5, et seq.*)

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

29 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges four causes of action
30 against defendants TAKAOKAYA U.S.A., INC.; CALIFORNIA MARKETPLACE, INC.; and
31 DOES 1-40 as follows:
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THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant TAKAOKAYA U.S.A., INC. (“TAKAOKAYA”) is a California Corporation doing business in the State of California at all relevant times herein.
3. Defendant CALIFORNIA MARKETPLACE (“CALI MARKET”) is a California Corporation doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-40, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
5. At all times mentioned herein, the term “Defendants” includes TAKAOKAYA, CALI MARKET, and DOES 1-40.
6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-40, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing

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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. Plaintiff identified certain practices of Seaweed manufacturers and distributors of
26 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 without first providing clear and reasonable warnings
2 of such to the exposed persons prior to the time of exposure. Plaintiff later discerned
3 that Defendants engaged in such practice.

4 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. Plaintiff served the following notices for alleged violations of Health and Safety Code
19 Section 25249.6, concerning consumer products exposures:

- 20 a. On or about June 18, 2020, Plaintiff gave notice of alleged violations of Health
21 and Safety Code Section 25249.6, concerning consumer products exposures
22 subject to a private action to TAKAOKAYA and CALI MARKET and to the
23 California Attorney General, County District Attorneys, and City Attorneys for
24 each city containing a population of at least 750,000 people in whose
25 jurisdictions the violations allegedly occurred, concerning Roasted Seaweed.
26 b. On or about July 10, 2020, Plaintiff gave notice of alleged violations of Health
27 and Safety Code Section 25249.6, concerning consumer products exposures

1 subject to a private action to TAKAOKAYA and to the California Attorney
2 General, County District Attorneys, and City Attorneys for each city containing
3 a population of at least 750,000 people in whose jurisdictions the violations
4 allegedly occurred, concerning Roasted Seaweed.

5 c. On or about July 15, 2020, Plaintiff gave notice of alleged violations of Health
6 and Safety Code Section 25249.6, concerning consumer products exposures
7 subject to a private action to TAKAOKAYA and to the California Attorney
8 General, County District Attorneys, and City Attorneys for each city containing
9 a population of at least 750,000 people in whose jurisdictions the violations
10 allegedly occurred, concerning Yaki Nori Tokusen Roasted Seaweed.

11 d. On or about July 22, 2020, Plaintiff gave notice of alleged violations of Health
12 and Safety Code Section 25249.6, concerning consumer products exposures
13 subject to a private action to TAKAOKAYA and to the California Attorney
14 General, County District Attorneys, and City Attorneys for each city containing
15 a population of at least 750,000 people in whose jurisdictions the violations
16 allegedly occurred, concerning Yaki Nori Tokusen Roasted Seaweed.

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

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

4 26. Plaintiff's notices of alleged violations also included Certificates of Service and a
5 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
6 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

7 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
8 gave notice of the alleged violations to TAKAOKAYA, CALI MARKET, and the public
9 prosecutors referenced in Paragraph 23.

10 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
11 any applicable district attorney or city attorney has commenced and is diligently
12 prosecuting an action against the Defendants.

13 **FIRST CAUSE OF ACTION**

14 **(By CONSUMER ADVOCACY GROUP, INC. and against TAKAOKAYA, CALI**
15 **MARKET, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking**
16 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, et**
17 **seq.))**

18 **Seaweed**

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

21 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Roasted Seaweed ("Seaweed I"), including but not
23 limited to: "Roasted Seaweed Yakisushinori"; "Half Cut"; "Net Weight 3.75 oz (105 g)";
24 "100 Sheets"; "Distributed by Takaokaya U.S.A., Inc." "7 35407 00006 2"; "Product of
25 Korea".

26 31. Seaweed I contains Lead and Cadmium.

27 32. Defendants knew or should have known that Lead and Cadmium have been identified by
28 the State of California as a chemical known to cause cancer, and reproductive toxicity

1 and therefore was subject to Proposition 65 warning requirements. Defendants were also
2 informed of the presence of Lead and Cadmium in Seaweed I within Plaintiff's notice of
3 alleged violations further discussed above at Paragraph 23a.

4 33. Plaintiff's allegations regarding Seaweed I 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 Seaweed I is a consumer product, and, as mentioned herein, exposures to Lead and
9 Cadmium took place as a result of such normal and foreseeable consumption and use.

10 34. Plaintiff is informed, believes, and thereon alleges that between June 18, 2017 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Seaweed I, which Defendants manufactured, distributed, or sold
13 as mentioned above, to Lead and Cadmium, without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure. Further,
15 Plaintiff is informed, believes, and thereon alleges that CALI MARKET knowingly
16 introduced Lead and Cadmium into the Seaweed I; knowingly caused Lead and
17 Cadmium to be created in the Seaweed I; covered, obscured, or altered a warning;
18 received notice and warning materials for the exposure from its upstream entities; and/or
19 have actual knowledge of the potential exposure to Lead and Cadmium from Seaweed I
20 requiring the warning. Defendants have distributed and sold Seaweed I in California.
21 Defendants know and intend that California consumers will use and consume Seaweed I,
22 thereby exposing them to Lead and Cadmium. Defendants thereby violated Proposition
23 65.

24 35. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by handling Seaweed I without wearing gloves or any other
26 personal protective equipment, or by touching bare skin or mucous membranes with
27 gloves after handling Seaweed I, 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 I during use, as well as through environmental mediums that carry the Lead and
3 Cadmium once contained in the Seaweed I.

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

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

14 38. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to Lead and Cadmium from Seaweed I,
16 pursuant to Health and Safety Code Section 25249.7(b).

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

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20 **SECOND CAUSE OF ACTION**

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

24 **Seaweed**

25 40. Plaintiff repeats and incorporates by reference paragraphs 1 through 39 of this complaint
26 as though fully set forth herein.

27 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Roasted Seaweed ("Seaweed II"), including but not

1 limited to: “Hatsuzumi Temakinori”; “Takaokaya”; “Roasted Seaweed for Hand Roll”;
2 “Net Wt. 0.75 oz. (21g) 20 Sheets”; “UPC 7 35407 00111 3”.

3 42. Seaweed II contains Arsenic and Cadmium.

4 43. Defendants knew or should have known that Arsenic and Cadmium have been identified
5 by the State of California as a chemical known to cause cancer, and reproductive toxicity
6 and therefore was subject to Proposition 65 warning requirements. Defendants were also
7 informed of the presence of Arsenic and Cadmium in Seaweed II within Plaintiff's notice
8 of alleged violations further discussed above at Paragraph 23b.

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

15 45. Plaintiff is informed, believes, and thereon alleges that between July 10, 2017 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Seaweed II, which Defendants manufactured, distributed, or sold
18 as mentioned above, to Arsenic and Cadmium, without first providing any type of clear
19 and reasonable warning of such to the exposed persons before the time of exposure.
20 Defendants have distributed and sold Seaweed II in California. Defendants know and
21 intend that California consumers will use and consume Seaweed II, thereby exposing
22 them to Arsenic and Cadmium. Defendants thereby violated Proposition 65.

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

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

10 48. 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 49. 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 and Cadmium from Seaweed II,
15 pursuant to Health and Safety Code Section 25249.7(b).

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

18 **THIRD CAUSE OF ACTION**

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

22 **Seaweed**

23 51. Plaintiff repeats and incorporates by reference paragraphs 1 through 50 of this complaint
24 as though fully set forth herein.

25 52. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of Yaki Nori Tokusen Roasted Seaweed ("Seaweed
27 III"), including but not limited to: "Takaokaya"; "Yaki Sushi Nori"; "Sushihane";
28 "Roasted Seaweed"; "30 Full Sheets" "Net Wt. 2.25 oz/63g"; "UPC 7 35407 00108 3".

1 53. Seaweed III contains Cadmium.

2 54. Defendants knew or should have known that Cadmium has been identified by the State
3 of California as a chemical known to cause cancer, and reproductive toxicity and
4 therefore was subject to Proposition 65 warning requirements. Defendants were also
5 informed of the presence of Cadmium in Seaweed III within Plaintiff's notice of alleged
6 violations further discussed above at Paragraph 23c.

7 55. Plaintiff's allegations regarding Seaweed III concerns "[c]onsumer products
8 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
9 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
10 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
11 25602(b). Seaweed III is a consumer product, and, as mentioned herein, exposures to
12 Cadmium took place as a result of such normal and foreseeable consumption and use.

13 56. Plaintiff is informed, believes, and thereon alleges that between July 15, 2017 and the
14 present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Seaweed III, which Defendants manufactured, distributed, or
16 sold as mentioned above, to Cadmium, without first providing any type of clear and
17 reasonable warning of such to the exposed persons before the time of exposure.

18 Defendants have distributed and sold Seaweed III in California. Defendants know and
19 intend that California consumers will use and consume Seaweed III, thereby exposing
20 them to Cadmium. Defendants thereby violated Proposition 65.

21 57. The principal routes of exposure are through dermal contact, ingestion and inhalation.
22 Persons sustain exposures by handling Seaweed III without wearing gloves or any other
23 personal protective equipment, or by touching bare skin or mucous membranes with
24 gloves after handling Seaweed III, as well as through direct and indirect hand to mouth
25 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
26 Seaweed III during use, as well as through environmental mediums that carry the
27 Cadmium once contained in the Seaweed III.

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

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

19 **Seaweed**

20 62. Plaintiff repeats and incorporates by reference paragraphs 1 through 61 of this complaint
21 as though fully set forth herein.

22 63. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Yaki Nori Tokusen Roasted Seaweed ("Seaweed
24 IV"), including but not limited to: "Takaokaya"; "Yakinori Tokusen"; "Roasted
25 Seaweed"; "Net Wt. 0.75 oz/21g"; "UPC 735407 00107 6".

26 64. Seaweed III contains Cadmium.

27 65. Defendants knew or should have known that Cadmium has been identified by the State
28 of California as a chemical known to cause cancer, and reproductive toxicity and

1 therefore was subject to Proposition 65 warning requirements. Defendants were also
2 informed of the presence of Cadmium in Seaweed IV within Plaintiff's notice of alleged
3 violations further discussed above at Paragraph 23d.

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

10 67. Plaintiff is informed, believes, and thereon alleges that between July 22, 2017 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Seaweed IV, which Defendants manufactured, distributed, or
13 sold as mentioned above, to Cadmium, without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure.
15 Defendants have distributed and sold Seaweed IV in California. Defendants know and
16 intend that California consumers will use and consume Seaweed IV, thereby exposing
17 them to Cadmium. Defendants thereby violated Proposition 65.

18 68. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by handling Seaweed IV without wearing gloves or any other
20 personal protective equipment, or by touching bare skin or mucous membranes with
21 gloves after handling Seaweed IV, as well as through direct and indirect hand to mouth
22 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
23 Seaweed IV during use, as well as through environmental mediums that carry the
24 Cadmium once contained in the Seaweed IV.

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

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

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

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

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13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

20
21 Dated: October 8, 2020

YEROUSHALMI & YEROUSHALMI*

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