

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

HONG KONG SUPERMARKET OF
MONTEREY PARK, LTD., a California
Corporation;
and DOES 1-20,

Defendants.

CASE NO. **21STCV03826**

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
against defendants HONG KONG SUPERMARKET OF MONTEREY PARK, LTD. and
DOES 1-20 as follows:

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 HONG KONG SUPERMARKET OF MONTEREY PARK, LTD (“HONG KONG”) is a California Corporation doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, 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.
4. At all times mentioned herein, the term “Defendants” includes HONG KONG and DOES 1-20.
5. 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.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, 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

agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

JURISDICTION

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

BACKGROUND AND PRELIMINARY FACTS

11. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
12. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals and chemical families. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
13. All businesses with ten (10) or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable” warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
14. Proposition 65 provides that any person “violating or threatening to violate” the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7. “Threaten to violate” means “to create a condition in which there is a substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

- 1 15. Plaintiff identified certain practices of exposing, knowingly and intentionally, persons in
2 California to Lead and Lead Compounds, Cadmium and Cadmium Compounds,
3 Inorganic Arsenic Compounds, and Inorganic Arsenic Oxides without first providing
4 clear and reasonable warnings of such to the exposed persons prior to the time of
5 exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 6 16. On October 1, 1992 the Governor of California added Lead and Lead Compounds
7 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
8 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
9 twenty (20) months after addition of Lead to the list of chemicals known to the State to
10 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
11 discharge prohibitions.
- 12 17. On February 27, 1987, the Governor of California added Lead to the list of chemicals
13 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
14 tit. 27, § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
15 twenty (20) months after addition of Lead to the list of chemicals known to the State to
16 cause developmental and reproductive toxicity, Lead became fully subject to Proposition
17 65 warning requirements and discharge prohibitions.
- 18 18. On October 1, 1987 the Governor of California added Cadmium and Cadmium
19 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
20 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
21 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
22 chemicals known to the State to cause cancer, Cadmium became fully subject to
23 Proposition 65 warning requirements and discharge prohibitions.
- 24 19. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
25 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
26 tit. 27, § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
27 twenty (20) months after addition of Cadmium to the list of chemicals known to the State
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1 to cause developmental and reproductive toxicity, Cadmium became fully subject to
2 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)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
12 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
13 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
14 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
15 Compounds and Inorganic Arsenic Oxides is hereinafter referred to as “Arsenic”.

16 **SATISFACTION OF PRIOR NOTICE**

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

- 19 a. On or about August 25, 2020, Plaintiff gave notice of alleged violations of
20 Health and Safety Code Section 25249.6, concerning consumer products
21 exposures subject to a private action to HONG KONG and to the California
22 Attorney General, County District Attorneys, and City Attorneys for each city
23 containing a population of at least 750,000 people in whose jurisdictions the
24 violations allegedly occurred, concerning Round Shaped Dried Seaweed.
- 25 b. On or about September 2, 2020, Plaintiff gave notice of alleged violations of
26 Health and Safety Code Section 25249.6, concerning consumer products
27 exposures subject to a private action to HONG KONG and to the California
28

1 Attorney General, County District Attorneys, and City Attorneys for each city
2 containing a population of at least 750,000 people in whose jurisdictions the
3 violations allegedly occurred, concerning Dried Seaweed.

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

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

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

21 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notice of the alleged violations to HONG KONG and the public prosecutors
23 referenced in Paragraph 22.

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

FIRST CAUSE OF ACTION

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

Seaweed

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

29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Round Shaped Dried Seaweed (“Seaweed I”), including but not limited to: “Round Shaped Dried Seaweed”; “Grove Grow Notes”; “Net Wt: 65g (2.3 oz); “UPC 6 926265 022417”; “Product of China”.

30. Seaweed I contains Lead and Arsenic.

31. Defendants knew or should have known that Lead and Arsenic have been identified by the State of California as a chemical known to cause cancer, and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of Lead and Arsenic in Seaweed I within Plaintiff’s notice of alleged violations further discussed above at Paragraph 22a.

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

33. Plaintiff is informed, believes, and thereon alleges that between August 25, 2017 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Seaweed I, which Defendants manufactured, distributed, or sold as mentioned above, to Lead and Arsenic, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure.

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

34. The principal routes of exposure are through ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption. Persons sustain exposures by eating and consuming Seaweed I and additionally by handling Seaweed I without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling Seaweed I, as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from Seaweed I.

35. Plaintiff is informed, believes, and thereon alleges that HONG KONG is selling Seaweed I under a brand or trademark that is owned or licensed by HONG KONG or an entity affiliated thereto; has knowingly introduced Lead and Arsenic into Seaweed I or knowingly caused Lead and Arsenic to be created in Seaweed I; has covered, obscured or altered a warning label that has been affixed to Seaweed I by the manufacturer, producer, packager, importer, supplier or distributor of Seaweed I; has received a notice and warning materials for exposure from Seaweed I without conspicuously posting or displaying the warning materials; and/or has actual knowledge of potential exposure to Lead and Arsenic from Seaweed I.

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

1 37. 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 38. 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 Arsenic from Seaweed I, pursuant
6 to Health and Safety Code Section 25249.7(b).

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

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10 **SECOND CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against HONG KONG and**
12 **DOES 11-20 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**

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

17 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Dried Seaweed (“Seaweed II”), including but not
19 limited to: “Peony Mark”, “Dried Seaweed”; “Net Wt: 2oz (57g); “UPC 6 86529 13219
20 6”; “Product of China”.

21 42. Seaweed II contains Lead, Cadmium, and Arsenic.

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

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

consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.

Seaweed II is a consumer product, and, as mentioned herein, exposures to Lead, Cadmium, and Arsenic took place as a result of such normal and foreseeable consumption and use.

45. Plaintiff is informed, believes, and thereon alleges that between September 2, 2017 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Seaweed II, which Defendants manufactured, distributed, or sold as mentioned above, to Lead, Cadmium, and Arsenic, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Seaweed II in California. Defendants know and intend that California consumers will use and consume Seaweed II, thereby exposing them to Lead, Cadmium, and Arsenic. Defendants thereby violated Proposition 65.

46. The principal routes of exposure are through ingestion, especially direct (oral) ingestion, inhalation, and trans-dermal absorption. Persons sustain exposures by eating and consuming Seaweed II and additionally by handling Seaweed II without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling Seaweed II, as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from Seaweed II.

47. Plaintiff is informed, believes, and thereon alleges that HONG KONG is selling Seaweed II under a brand or trademark that is owned or licensed by HONG KONG or an entity affiliated thereto; has knowingly introduced Lead, Cadmium, and Arsenic into Seaweed II or knowingly caused Lead, Cadmium, and Arsenic to be created in Seaweed II; has covered, obscured or altered a warning label that has been affixed to Seaweed II by the manufacturer, producer, packager, importer, supplier or distributor of Seaweed II; has received a notice and warning materials for exposure from Seaweed II without

1 conspicuously posting or displaying the warning materials; and/or has actual knowledge
2 of potential exposure to Lead, Cadmium, and Arsenic from Seaweed II.

3 48. 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 Lead, Cadmium, and Arsenic by Seaweed II as
9 mentioned herein.

10 49. 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 50. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to Lead, Cadmium, and Arsenic from
15 Seaweed II, pursuant to Health and Safety Code Section 25249.7(b).

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

18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

- 20 1. A permanent injunction mandating Proposition 65-compliant warnings;
21 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
22 3. Costs of suit;
23 4. Reasonable attorney fees and costs; and
24 5. Any further relief that the court may deem just and equitable.
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1 Dated: January 29, 2021

YEROUSHALMI & YEROUSHALMI*

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