

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroshalmi.com

3 **YEROUSHALMI & YEROUSHALMI***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

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 EDEN FOODS, INC., a Michigan
17 Corporation;
18 and DOES 1—10,
19 Defendants.

CASE NO. 21STCV23004

FIRST AMENDED 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)

20
21
22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges five causes of action
23 against defendants EDEN FOODS, INC., and DOES 1-10 as follows:

24 **THE PARTIES**

- 25 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
26 organization qualified to do business in the State of California. CAG is a person within
27 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code Section 25249.7, subdivision (d).

3 2. Defendant EDEN FOODS, INC. (“EDEN FOODS”) is a Michigan Corporation doing
4 business in the State of California at all relevant times herein.

5 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
6 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
7 Complaint to allege their true names and capacities when ascertained. Plaintiff is
8 informed, believes, and thereon alleges that each fictitiously named defendant is
9 responsible in some manner for the occurrences herein alleged and the damages caused
10 thereby.

11 4. At all times mentioned herein, the term “Defendants” includes EDEN FOODS and
12 DOES 1-10.

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

15 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
16 including DOES 1-10, was an agent, servant, or employee of each of the other
17 Defendants. In conducting the activities alleged in this Complaint, each of the
18 Defendants was acting within the course and scope of this agency, service, or
19 employment, and was acting with the consent, permission, and authorization of each of
20 the other Defendants. All actions of each of the Defendants alleged in this Complaint
21 were ratified and approved by every other Defendant or their officers or managing
22 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
23 alleged wrongful conduct of each of the other Defendants.

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

28

1 **JURISDICTION**

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

19 **BACKGROUND AND PRELIMINARY FACTS**

- 20 11. In 1986, California voters approved an initiative to address growing concerns about
21 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
22 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
25 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
26 from contamination, to allow consumers to make informed choices about the products
27
28

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see
2 fit.

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

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

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

20 15. Plaintiff identified certain practices of manufacturers and distributors of Sushi Nori of
21 exposing, knowingly and intentionally, persons in California to Lead and Lead
22 Compounds of such products without first providing clear and reasonable warnings of
23 such to the exposed persons prior to the time of exposure. Plaintiff later discerned that
24 Defendants engaged in such practice.

25 16. On October 1, 1992 the Governor of California added Lead and Lead Compounds
26 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
27 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
28

1 twenty (20) months after addition of Lead to the list of chemicals known to the State to
2 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
3 discharge prohibitions.

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

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

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

24 20. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
25 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs. tit. 27,*
26 *§ 27001(c)*). Inorganic Arsenic Oxides is known to the State to cause developmental,
27 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
28

1 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
2 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
3 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
4 Oxides is hereinafter referred to as “Inorganic Arsenic”.

5
6 **SATISFACTION OF PRIOR NOTICE**

7 21. Plaintiff served the following notices for alleged violations of Health and Safety Code
8 Section 25249.6, concerning consumer products exposures:

- 9 a. On or about October 8, 2020, Plaintiff gave notice of alleged violations of
10 Health and Safety Code Section 25249.6, concerning consumer products
11 exposures subject to a private action to EDEN FOODS and to the California
12 Attorney General, County District Attorneys, and City Attorneys for each city
13 containing a population of at least 750,000 people in whose jurisdictions the
14 violations allegedly occurred, concerning the Sushi Nori.
- 15 b. On or about August 12, 2021 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 EDEN FOODS and to the California
18 Attorney General, County District Attorneys, and City Attorneys for each city
19 containing a population of at least 750,000 people in whose jurisdictions the
20 violations allegedly occurred, concerning the Seaweed.
- 21 c. On or about August 12, 2021 Plaintiff gave notice of alleged violations of
22 Health and Safety Code Section 25249.6, concerning consumer products
23 exposures subject to a private action to EDEN FOODS and to the California
24 Attorney General, County District Attorneys, and City Attorneys for each city
25 containing a population of at least 750,000 people in whose jurisdictions the
26 violations allegedly occurred, concerning the Pickled Ginger.

- 1 d. On or about October 15, 2021, Plaintiff gave notice of alleged violations of
2 Health and Safety Code Section 25249.6, concerning consumer products
3 exposures subject to a private action to EDEN FOODS and to the California
4 Attorney General, County District Attorneys, and City Attorneys for each city
5 containing a population of at least 750,000 people in whose jurisdictions the
6 violations allegedly occurred, concerning the Seaweed.
- 7 e. On or about October 22, 2021, Plaintiff gave notice of alleged violations of
8 Health and Safety Code Section 25249.6, concerning consumer products
9 exposures subject to a private action to EDEN FOODS and to the California
10 Attorney General, County District Attorneys, and City Attorneys for each city
11 containing a population of at least 750,000 people in whose jurisdictions the
12 violations allegedly occurred, concerning the Seaweed.

13 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
14 products involved, the likelihood that such products would cause users to suffer
15 significant exposures to Lead and Lead compounds, Cadmium and Cadmium
16 Compounds, and Inorganic Arsenic and the corporate structure of each of the
17 Defendants.

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

28

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

4 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notice of the alleged violations to EDEN FOODS and the public prosecutors
6 referenced in Paragraph 19.

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

10 **FIRST CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against EDEN FOODS and**
12 **DOES 1-10 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 1**

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

17 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Sushi Nori ("Seaweed"), including but not limited to
19 "Eden ® Sushi Nori"; "Toasted Sea Vegetable"; "Net Wt. 0.6 oz. 17g 7 Sheets";
20 "edenfoods.com/sushi"; "UPC 0 24182 15769 7"; "Product of Japan";

21 29. Sushi Nori contains Lead.

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

27 31. Plaintiff's allegations regarding Sushi Nori concerns "[c]onsumer products exposure[s],"
28 which "is an exposure that results from a person's acquisition, purchase, storage,

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

3 Sushi Nori is a consumer product, and, as mentioned herein, exposures to lead took place
4 as a result of such normal and foreseeable consumption and use.

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

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

1 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Sushi Nori 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 Sushi
5 Nori, so that a separate and distinct violation of Proposition 65 occurred each and every
6 time a person was exposed to Lead by Sushi Nori as mentioned herein.

7 35. 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 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
11 \$2,500.00 per day per individual exposure to Lead from Sushi Nori pursuant to Health
12 and Safety Code Section 25249.7(b).

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

15 **SECOND CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against EDEN FOODS and**
17 **DOES 1-10 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 2**

20 38. Plaintiff repeats and incorporates by reference paragraphs 1 through 37 of this complaint
21 as though fully set forth herein.

22 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Dried Arame Seaweed ("Seaweed 2"), including but
24 not limited to "Eden ® Dried Arame Seaweed"; "Sea Vegetable"; "Wild, Japanese, Hand
25 Harvested"; "Net Wt. 2.1 oz (60 grams)"; "UPC 0 24182 15475 7"; "Product of Japan".

26 40. Seaweed 2 contains Lead and Inorganic Arsenic.

27 41. Defendants knew or should have known that Lead and Inorganic Arsenic has been
28 identified by the State of California as chemicals known to cause cancer and

1 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
2 Defendants were also informed of the presence of Lead and Inorganic Arsenic in
3 Seaweed 2 within Plaintiff's notice of alleged violations further discussed above at
4 Paragraph 21b.

5 42. Plaintiff's allegations regarding Seaweed 2 concerns "[c]onsumer products exposure[s],"
6 which "is an exposure that results from a person's acquisition, purchase, storage,
7 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
8 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
9 Seaweed 2 is a consumer product, and, as mentioned herein, exposures to Lead and
10 Inorganic Arsenic took place as a result of such normal and foreseeable consumption and
11 use.

12 43. Plaintiff is informed, believes, and thereon alleges that between August 12, 2018 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Seaweed 2, which Defendants manufactured, distributed, or sold
15 as mentioned above, to Lead and Inorganic Arsenic, without first providing any type of
16 clear and reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold Seaweed 2 in California. Defendants know and
18 intend that California consumers will use and consume Seaweed 2, thereby exposing
19 them to Lead and Inorganic Arsenic. Further, Plaintiff is informed, believes, and thereon
20 alleges that Defendants are selling Seaweed 2 under a brand or trademark that is owned
21 or licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
22 Lead and Inorganic Arsenic into Seaweed 2 or knowingly caused Lead and Inorganic
23 Arsenic to be created in Seaweed 2; have covered, obscured or altered a warning label
24 that has been affixed to Seaweed 2 by the manufacturer, producer, packager, importer,
25 supplier or distributor of Seaweed 2 have received a notice and warning materials for
26 exposure from Seaweed 2 without conspicuously posting or displaying the warning
27
28

1 materials; and/or have actual knowledge of potential exposure to Lead and Inorganic
2 Arsenic from Seaweed 2. Defendants thereby violated Proposition 65.

3 44. The principal routes of exposure are through dermal contact, ingestion and inhalation.
4 Persons sustain exposures by eating and consuming Seaweed 2 and by handling Seaweed
5 2 without wearing gloves or any other personal protective equipment, or by touching
6 bare skin or mucous membranes with gloves after handling Seaweed 2, as well as
7 through direct and indirect hand to mouth contact, hand to mucous membrane, or
8 breathing in particulate matter dispersed from Seaweed 2.

9 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
10 Proposition 65 as to Seaweed 2 have been ongoing and continuous, as Defendants
11 engaged and continue to engage in conduct which violates Health and Safety Code
12 Section 25249.6, including the manufacture, distribution, promotion, and sale of
13 Seaweed 2, so that a separate and distinct violation of Proposition 65 occurred each and
14 every time a person was exposed to Lead and Inorganic Arsenic by Seaweed 2 as
15 mentioned herein.

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

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

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

24 **THIRD CAUSE OF ACTION**

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

28 **Pickled Ginger**

1 49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 of this complaint
2 as though fully set forth herein.

3 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Pickled Ginger with Shiso Leaves (“Pickled Ginger”)
5 including but not limited to "Eden ® Pickled Ginger with Shiso Leaves"; "Net Wt. 2.1 oz
6 (60 grams)"; "UPC 0 2418230101 4"; "Product of Japan".

7 51. Pickled Ginger contains Lead.

8 52. Defendants knew or should have known that lead has been identified by the State of
9 California as a chemical known to cause cancer and reproductive toxicity and therefore
10 was subject to Proposition 65 warning requirements. Defendants were also informed of
11 the presence of lead in Pickled Ginger within Plaintiff’s notice of alleged violations
12 further discussed above at Paragraph 21c.

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

19 54. Plaintiff is informed, believes, and thereon alleges that between August 12, 2018 and the
20 present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of Pickled Ginger, which Defendants manufactured, distributed, or
22 sold as mentioned above, to Lead, without first providing any type of clear and
23 reasonable warning of such to the exposed persons before the time of exposure.
24 Defendants have distributed and sold Pickled Ginger in California. Defendants know
25 and intend that California consumers will use and consume Pickled Ginger, thereby
26 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
27 Defendants are selling Pickled Ginger under a brand or trademark that is owned or
28

1 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
2 Lead into Pickled Ginger or knowingly caused lead to be created in Pickled Ginger; have
3 covered, obscured or altered a warning label that has been affixed to Pickled Ginger by
4 the manufacturer, producer, packager, importer, supplier or distributor of Pickled Ginger
5 have received a notice and warning materials for exposure from Pickled Ginger without
6 conspicuously posting or displaying the warning materials; and/or have actual
7 knowledge of potential exposure to Lead from Pickled Ginger. Defendants thereby
8 violated Proposition 65.

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

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

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

24 58. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to Lead from Pickled Ginger pursuant to
26 Health and Safety Code Section 25249.7(b).

27
28

1 59. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3
4 **FOURTH CAUSE OF ACTION**

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

8 **Seaweed 3**

9 60. Plaintiff repeats and incorporates by reference paragraphs 1 through 59 of this complaint
10 as though fully set forth herein.

11 61. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Nori Seaweed including but not limited to “Eden”;
13 “Nori Sea Vegetable”; “Traditional Japanese”; “Net Wt. 0.88 oz 25g”; “UPC 0 24182
14 15706 2”; “; “Product of Japan”

15 62. Nori Seaweed contains Lead.

16 63. Defendants knew or should have known that lead has been identified by the State of
17 California as a chemical known to cause cancer and reproductive toxicity and therefore
18 was subject to Proposition 65 warning requirements. Defendants were also informed of
19 the presence of lead in Nori Seaweed within Plaintiff’s notice of alleged violations
20 further discussed above at Paragraph 21d.

21 64. Plaintiff’s allegations regarding Nori Seaweed concerns “[c]onsumer products
22 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
23 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
24 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
25 *25602(b)*. Nori Seaweed is a consumer product, and, as mentioned herein, exposures to
26 lead took place as a result of such normal and foreseeable consumption and use.

27 65. Plaintiff is informed, believes, and thereon alleges that between October 15, 2018 and
28 the present, each of the Defendants knowingly and intentionally exposed California
consumers and users of Nori Seaweed, which Defendants manufactured, distributed, or

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

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

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

1 68. 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 69. 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 from Nori Seaweed pursuant to
6 Health and Safety Code Section 25249.7(b).

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

9
10 **FIFTH CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against EDEN FOODS and**
12 **DOES 1-10 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 4**

15 71. Plaintiff repeats and incorporates by reference paragraphs 1 through 70 of this complaint
16 as though fully set forth herein.

17 72. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Sea Vegetable including but not limited to "Eden
19 Kombu Sea Vegetable Japanese Hand Harvested"; "Net Wt. 2.1 oz 60g"; "UPC 0 24182
20 15273 9"; "Product of Japan"

21 73. Sea Vegetables contains Inorganic Arsenic and Cadmium.

22 74. Defendants knew or should have known that Inorganic Arsenic and Cadmium has 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 Inorganic Arsenic and Cadmium in
26 Sea Vegetables within Plaintiff's notice of alleged violations further discussed above at
27 Paragraph 21e.

28 75. Plaintiff's allegations regarding Sea Vegetables concerns "[c]onsumer products
exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
2 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
3 *25602(b)*. Sea Vegetables is a consumer product, and, as mentioned herein, exposures to
4 Inorganic Arsenic and Cadmium took place as a result of such normal and foreseeable
5 consumption and use.

6 76. Plaintiff is informed, believes, and thereon alleges that between October 22, 2018 and
7 the present, each of the Defendants knowingly and intentionally exposed California
8 consumers and users of Sea Vegetables, which Defendants manufactured, distributed, or
9 sold as mentioned above, to Inorganic Arsenic and Cadmium, without first providing any
10 type of clear and reasonable warning of such to the exposed persons before the time of
11 exposure. Defendants have distributed and sold Sea Vegetables in California.
12 Defendants know and intend that California consumers will use and consume Sea
13 Vegetables, thereby exposing them to Inorganic Arsenic and Cadmium. Further, Plaintiff
14 is informed, believes, and thereon alleges that Defendants are selling Sea Vegetables
15 under a brand or trademark that is owned or licensed by the Defendants or an entity
16 affiliated thereto; have knowingly introduced Inorganic Arsenic and Cadmium into Sea
17 Vegetables or knowingly caused Inorganic Arsenic and Cadmium to be created in Sea
18 Vegetables; have covered, obscured or altered a warning label that has been affixed to
19 Sea Vegetables by the manufacturer, producer, packager, importer, supplier or distributor
20 of Sea Vegetables have received a notice and warning materials for exposure from Sea
21 Vegetables without conspicuously posting or displaying the warning materials; and/or
22 have actual knowledge of potential exposure to Inorganic Arsenic and Cadmium from
23 Sea Vegetables. Defendants thereby violated Proposition 65.

24 77. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by eating and consuming Sea Vegetables and by handling Sea
26 Vegetables without wearing gloves or any other personal protective equipment, or by
27 touching bare skin or mucous membranes with gloves after handling Sea Vegetables, as
28

1 well as through direct and indirect hand to mouth contact, hand to mucous membrane, or
2 breathing in particulate matter dispersed from Sea Vegetables.

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

10 79. 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 80. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to Inorganic Arsenic and Cadmium from Sea
15 Vegetables pursuant to Health and Safety Code Section 25249.7(b).

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

18
19 **PRAYER FOR RELIEF**

20 Plaintiff demands against each of the Defendants as follows:

21 82. A permanent injunction mandating Proposition 65-compliant warnings;

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

23 84. Costs of suit;

24 85. Reasonable attorney fees and costs; and

25 86. Any further relief that the court may deem just and equitable.

1 Dated: January 27, 2022

YEROUSHALMI & YEROUSHALMI*

2
3 

4 _____
5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 CONSUMER ADVOCACY GROUP, INC.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28