

David W. Slayton, Executive Officer / Clerk of Court
By: J. Choi Deputy

1 `Reuben Yeroushalmi (SBN 193981)
2 reuben@yeroushalmi.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
9 Attorneys for Plaintiff,
10 CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8
9 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 EDEN FOODS, INC., a Michigan
16 Corporation;
17 and DOES 1-40,
18 Defendants.

CASE NO. 21STCV23004

SECOND 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
CIVILCASE (exceeds \$25,000)

19
20
21
22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges five causes of action
23 against defendants EDEN FOODS, INC., and DOES 1-40 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 1-40,
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 1-40.

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 1-40, 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 they buy, and to enable persons to protect themselves from toxic chemicals as they see
28 fit.

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

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

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

18 15. Plaintiff identified certain practices of manufacturers and distributors of Food Products of
19 exposing, knowingly and intentionally, persons in California to Lead and Lead
20 Compounds, Cadmium and Cadmium Compounds, and Inorganic Arsenic Oxides of such
21 products without first providing clear and reasonable warnings of such to the exposed
22 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in
23 such practice.

24 16. On October 1, 1992 the Governor of California added Lead and Lead Compounds
25 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
26 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
27 twenty (20) months after addition of Lead to the list of chemicals known to the State to
28 cause cancer, Lead became fully subject to Proposition 65 warning requirements and

1 discharge prohibitions.

2
3 17. On February 27, 1987, the Governor of California added Lead to the list of chemicals
4 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
5 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
6 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
7 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
8 the State to cause developmental and reproductive toxicity, Lead became fully subject to
9 Proposition 65 warning requirements and discharge prohibitions.

10
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 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to

1 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
2 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
3 Oxides is hereinafter referred to as “Inorganic Arsenic”.

4
5 **SATISFACTION OF PRIOR NOTICE**

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

8 a. On or about August 12, 2021 Plaintiff gave notice of alleged violations of
9 Health and Safety Code Section 25249.6, concerning consumer products
10 exposures subject to a private action to EDEN FOODS and to the California
11 Attorney General, County District Attorneys, and City Attorneys for each city
12 containing a population of at least 750,000 people in whose jurisdictions the
13 violations allegedly occurred, concerning the Seaweed.

14 b. On or about August 12, 2021 Plaintiff gave notice of alleged violations of
15 Health and Safety Code Section 25249.6, concerning consumer products
16 exposures subject to a private action to EDEN FOODS and to the California
17 Attorney General, County District Attorneys, and City Attorneys for each city
18 containing a population of at least 750,000 people in whose jurisdictions the
19 violations allegedly occurred, concerning the Pickled Ginger.

20 c. On or about October 22, 2021, Plaintiff gave notice of alleged violations of
21 Health and Safety Code Section 25249.6, concerning consumer products
22 exposures subject to a private action to EDEN FOODS and to the California
23 Attorney General, County District Attorneys, and City Attorneys for each city
24 containing a population of at least 750,000 people in whose jurisdictions the
25 violations allegedly occurred, concerning the Seaweed.

26 d. On or about May 3, 2022, Plaintiff gave notice of alleged violations of Health
27 and Safety Code Section 25249.6, concerning consumer products exposures
28 subject to a private action to EDEN FOODS, and to the California Attorney

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

4 e. On or about January 18, 2023, Plaintiff gave notice of alleged violations of
5 Health and Safety Code Section 25249.6, concerning consumer products
6 exposures subject to a private action to EDEN FOODS, and to the California
7 Attorney General, County District Attorneys, and City Attorneys for each city
8 containing a population of at least 750,000 people in whose jurisdictions the
9 violations allegedly occurred, concerning the Wakame Seaweed.

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

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

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

28 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff

1 gave notice of the alleged violations to EDEN FOODS and the public prosecutors
2 referenced in Paragraph 19.

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

6 **FIRST CAUSE OF ACTION**

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

10 **Seaweed I**

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

13 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Dried Arame Seaweed (“Seaweed I”), including but
15 not limited to "Eden ® Dried Arame Seaweed"; "Sea Vegetable"; "Wild, Japanese, Hand
16 Harvested"; "Net Wt. 2.1 oz (60 grams)"; "UPC 0 24182 15475 7"; "Product of Japan".

17 29. Seaweed I contains Lead and Inorganic Arsenic.

18 30. Defendants knew or should have known that Lead and Inorganic Arsenic has been
19 identified by the State of California as chemicals known to cause cancer and
20 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
21 Defendants were also informed of the presence of Lead and Inorganic Arsenic in
22 Seaweed I within Plaintiff's notice of alleged violations further discussed above at
23 Paragraph 21a.

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

1 Inorganic Arsenic took place as a result of such normal and foreseeable consumption and
2 use.

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

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

26 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to Seaweed I have been ongoing and continuous, as Defendants
28 engaged and continue to engage in conduct which violates Health and Safety Code

1 Section 25249.6, including the manufacture, distribution, promotion, and sale of
2 Seaweed I, so that a separate and distinct violation of Proposition 65 occurred each and
3 every time a person was exposed to Lead and Inorganic Arsenic by Seaweed I as
4 mentioned herein.

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

8 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to Lead and Inorganic Arsenic from Seaweed
10 2 pursuant to Health and Safety Code Section 25249.7(b).

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

13
14 **SECOND CAUSE OF ACTION**

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

18 **Pickled Ginger**

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

21 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Pickled Ginger with Shiso Leaves (“Pickled Ginger”)
23 including but not limited to "Eden ® Pickled Ginger with Shiso Leaves"; "Net Wt. 2.1 oz
24 (60 grams)"; "UPC 0 2418230101 4"; "Product of Japan".

25 40. Pickled Ginger contains Lead.

26 41. Defendants knew or should have known that lead has been identified by the State of
27 California as a chemical known to cause cancer and reproductive toxicity and therefore
28 was subject to Proposition 65 warning requirements. Defendants were also informed of
the presence of lead in Pickled Ginger within Plaintiffs notice of alleged violations

1 further discussed above at Paragraph 21b.

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

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

25 44. The principal routes of exposure are through ingestion. Persons sustain exposures by
26 eating and consuming Pickled Ginger and by handling Pickled Ginger without wearing
27 gloves or any other personal protective equipment, or by touching bare skin or mucous
28 membranes with gloves after handling Pickled Ginger, as well as through direct and

1 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
2 matter dispersed from Pickled Ginger.

3 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to Pickled Ginger 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 Pickled
7 Ginger, so that a separate and distinct violation of Proposition 65 occurred each and
8 every time a person was exposed to Lead by Pickled Ginger as mentioned herein.

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

12 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Lead from Pickled Ginger pursuant to
14 Health and Safety Code Section 25249.7(b).

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

17 **THIRD CAUSE OF ACTION**

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

21 **Seaweed II**

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

24 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Sea Vegetable including but not limited to "Eden
26 Kombu Sea Vegetable Japanese Hand Harvested"; "Net Wt. 2.1 oz 60g"; "UPC 0 24182
27 15273 9"; "Product of Japan"

28 51. Sea Vegetable contains Inorganic Arsenic and Cadmium.

1 52. Defendants knew or should have known that Inorganic Arsenic and Cadmium has been
2 identified by the State of California as a chemical known to cause cancer and
3 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
4 Defendants were also informed of the presence of Inorganic Arsenic and Cadmium in
5 Sea Vegetable within Plaintiff's notice of alleged violations further discussed above at
6 Paragraph 21c.

7 53. Plaintiff's allegations regarding Sea Vegetable 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)*. Sea Vegetable is a consumer product, and, as mentioned herein, exposures to
12 Inorganic Arsenic and Cadmium took place as a result of such normal and foreseeable
13 consumption and use.

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

1 Vegetable without conspicuously posting or displaying the warning materials; and/or
2 have actual knowledge of potential exposure to Inorganic Arsenic and Cadmium from
3 Sea Vegetable. Defendants thereby violated Proposition 65.

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

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

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

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

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

25 **FOURTH CAUSE OF ACTION**

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

Seaweed III

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

61. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Wakame Dried Seaweed ("Seaweed III"), including but not limited to "Eden®"; "Mekabu"; "Wakame Seaweed Sporophyll"; "Net Wt. 0.88 oz (25g)"; "3020"; "UPC 0 24182 15173 2".

62. Seaweed III contains Cadmium.

63. Defendants knew or should have known that Cadmium has 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 Cadmium in Seaweed III within Plaintiff's notices of alleged violations further discussed above at Paragraph 21d and 21e.

64. Plaintiff's allegations regarding Seaweed III 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 III is consumer products, and, as mentioned herein, exposures to Cadmium took place as a result of such normal and foreseeable consumption and use.

65. Plaintiff is informed, believes, and thereon alleges that between May 3, 2019 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Seaweed III, which Defendants manufactured, distributed, or sold as mentioned above, to Cadmium, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. CAG's continued investigations showed additional violations. Defendants have distributed and sold Seaweed III in California. Defendants know and intend that California consumers will use and consume Seaweed III, thereby exposing them to Cadmium. Further, Plaintiff

1 is informed, believes, and thereon alleges that Defendants are selling Seaweed III under
2 a brand or trademark that is owned or licensed by the Defendants or an entity affiliated
3 thereto; have knowingly introduced Cadmium into product or knowingly caused
4 Cadmium to be created in Seaweed III; have covered, obscured or altered a warning
5 label that has been affixed to Seaweed III by the manufacturer, producer, packager,
6 importer, supplier or distributor of Seaweed III; have received a notice and warning
7 materials for exposure from Seaweed III without conspicuously posting or displaying the
8 warning materials; and/or have actual knowledge of potential exposure to Cadmium
9 from Seaweed III. Defendants thereby violated Proposition 65.

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

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

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

25 69. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to Cadmium from Seaweed III, pursuant to
27 Health and Safety Code Section 25249.7(b).

28

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

3
4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

6 71. A permanent injunction mandating Proposition 65-compliant warnings;

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

8 73. Costs of suit;

9 74. Reasonable attorney fees and costs; and

10 75. Any further relief that the court may deem just and equitable.

11
12 Dated: May 10, 2023

YEROUSHALMI & YEROUSHALMI*

13
14
15 /s/ Reuben Yeroushalmi

16 Reuben Yeroushalmi

17 Attorneys for Plaintiff,

18 CONSUMER ADVOCACY GROUP, INC.
19
20
21
22
23
24
25
26
27
28