

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

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9 CONSUMER ADVOCACY GROUP, INC.

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

11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 TRADER JOE'S COMPANY., a California  
17 Corporation;  
18 and DOES 1-10,

19 Defendants.

CASE NO. **22CV023511**

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)

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24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against  
25 defendants Trader Joe's Company, and DOES 1-10 as follows:  
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**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant Trader Joe’s Company (“Trader Joe’s”) is a California Stock Corporation qualified to do business in California, and 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 1-10, 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 Trader Joe’s, and DOES 1-10.
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 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing



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

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

7 **JURISDICTION**

- 8 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
9 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
10 those given by statute to other trial courts. This Court has jurisdiction over this action  
11 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of  
12 violations of Proposition 65 in any Court of competent jurisdiction.

- 13 9. This Court has jurisdiction over Defendants named herein because Defendants either  
14 reside or are located in this State or are foreign corporations authorized to do business in  
15 California, are registered with the California Secretary of State, or who do sufficient  
16 business in California, have sufficient minimum contacts with California, or otherwise  
17 intentionally avail themselves of the markets within California through their  
18 manufacture, distribution, promotion, marketing, or sale of their products within  
19 California to render the exercise of jurisdiction by the California courts permissible  
20 under traditional notions of fair play and substantial justice.

- 21 10. Venue is proper in the County of Alameda because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
23 because Defendants conducted, and continue to conduct, business in the County of  
24 Alameda with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

25 15. Plaintiff identified certain practices of manufacturers and distributors of Seafood  
26 Products of exposing, knowingly and intentionally, persons in California to Cadmium  
27 and Cadmium Compounds of such products without first providing clear and reasonable  
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1 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later  
2 discerned that Defendants engaged in such practice.

3 16. On October 1, 1987, the Governor of California added Cadmium and Cadmium  
4 Compounds to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.*  
5 tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 24249.10,  
6 twenty (20) months after addition of Cadmium to the list of chemicals known to the State  
7 to cause cancer, Cadmium became fully subject to Proposition 65 warning requirements  
8 and discharge prohibitions.

9 17. On May 1, 1997, the Governor added Cadmium to the list of chemicals known to the  
10 state to cause developmental toxicity and male reproductive toxicity (*Cal. Code Regs.* tit.  
11 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male  
12 reproductive toxicity. Pursuant to Health and Safety Code section 25249.9 and 25249.10,  
13 twenty (20) months after addition of Cadmium to the list of chemicals known to the State  
14 to cause developmental and reproductive toxicity, Cadmium became fully subject to  
15 Proposition 65 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 18. 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 May 12, 2022, Plaintiff gave notice of alleged violations of Health  
20 and Safety Code Section 25249.6, concerning consumer products exposures  
21 subject to a private action to Trader Joe's, and to the California Attorney  
22 General, County District Attorneys, and City Attorneys for each city containing  
23 a population of at least 750,000 people in whose jurisdictions the violations  
24 allegedly occurred, concerning the Smoked Mussels.

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

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

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

14 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
15 gave notice of the alleged violations to Trader Joes, and the public prosecutors  
16 referenced in Paragraph 17.

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

#### 20 **FIRST CAUSE OF ACTION**

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

#### 24 **Seafood Products**

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

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



1 limited to “Trader Joe’s®”; “Lightly Smoked Mussels”; “In Extra Virgin Olive Oil”;  
2 “Dr. Wt. 2.43 oz (69g)”; “Net Wt. 4.02 oz (114g)”; “Product of Chile”; “Plant # 8318”;  
3 “SKU # 69349”; “UPC 0069 3493.”

4 26. Mussels contains Cadmium and Cadmium Compounds.

5 27. Defendants knew or should have known that Cadmium and Cadmium Compounds has  
6 been identified by the State of California as a chemical known to cause cancer, and  
7 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.  
8 Defendants were also informed of the presence of Cadmium and Cadmium Compounds  
9 in Mussels within Plaintiff’s notice of alleged violations further discussed above at  
10 Paragraph 18a.

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

18 29. Plaintiff is informed, believes, and thereon alleges that between May 12, 2019, and the  
19 present, each of the Defendants knowingly and intentionally exposed California  
20 consumers and users of Mussels, which Defendants manufactured, distributed, or sold as  
21 mentioned above, to Cadmium and Cadmium Compounds, without first providing any  
22 type of clear and reasonable warning of such to the exposed persons before the time of  
23 exposure. Defendants have distributed and sold Mussels in California. Defendants  
24 know and intend that California consumers will use and consume Mussels, thereby  
25 exposing them to Cadmium and Cadmium Compounds. Defendants thereby violated  
26 Proposition 65.

1 30. The principal routes of exposure are through dermal contact, inhalation and direct  
2 ingestion. Persons sustain exposures by handling the Mussels, as well as direct and  
3 indirect hand to mouth contact.

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

10 32. 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 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Cadmium and Cadmium Compounds from  
15 Mussels, pursuant to Health and Safety Code Section 25249.7(b).

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

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19 **PRAYER FOR RELIEF**

20 Plaintiff demands against each of the Defendants as follows:

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

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27 Dated: December 9, 2022

YEROUSHALMI & YEROUSHALMI\*



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/s/ Reuben Yeroushalmi  
Reuben Yeroushalmi  
Attorneys for Plaintiff,  
CONSUMER ADVOCACY GROUP, INC.