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Superior Court of California,
County of Alameda

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CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF ALAMEDA**

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

12 Plaintiff,

14 v.

15 IHERB, LLC, a Delaware Limited Liability
Corporation;
16 and DOES 1-10,

17 Defendants.

CASE NO. **22CV024727**

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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22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
23 defendants IHERB, LLC 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
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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 IHERB, LLC (“IHERB”) is a Delaware Limited Liability Corporation
4 qualified to do business in California and doing business in the State of California at all
5 relevant times herein.

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

12 4. At all times mentioned herein, the term “Defendants” includes IHERB, LLC and DOES
13 1-10.

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

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

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

3 **JURISDICTION**

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

21 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

26 16. On October 1, 1992 the Governor of California added Lead and Lead Compounds
27 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.

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1 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
2 twenty (20) months after addition of Lead to the list of chemicals known to the State to
3 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
4 discharge prohibitions.

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

12 **SATISFACTION OF PRIOR NOTICE**

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

15 a. On or about June 10, 2022, Plaintiff gave notice of alleged violations of Health
16 and Safety Code Section 25249.6, concerning consumer products exposures
17 subject to a private action to IHERB, and to the California Attorney General,
18 County District Attorneys, and City Attorneys for each city containing a
19 population of at least 750,000 people in whose jurisdictions the violations
20 allegedly occurred, concerning the Seaweed Salad Mix.

21 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
22 products involved, the likelihood that such products would cause users to suffer
23 significant exposures to Lead, and the corporate structure of each of the Defendants.

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

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

9 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notice of the alleged violations to IHERB, and the public prosecutors referenced in
11 Paragraph 18.

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

15 **FIRST CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against IHERB and DOES 1-**
17 **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**

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

22 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Seaweed Salad Mix ("Seaweed Salad"), including but
24 not limited to "Seavegi™"; "Seaweed Salad Mix"; "Net Wt. 0.9 oz (25 g)";
25 "07.30.2023"; "Product of Korea"; "SV-SALAD"; "UPC 6 09722 79850 1".

26 26. Seaweed Salad contains Lead.

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

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of Lead in Seaweed Salad within Plaintiff's notice of alleged violations
3 further discussed above at Paragraph 18a.

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

10 29. Plaintiff is informed, believes, and thereon alleges that between June 10, 2019 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Seaweed Salad, which Defendants manufactured, distributed, or
13 sold as mentioned above, to Lead, without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure.
15 Defendants have distributed and sold Seaweed Salad in California. Defendants know
16 and intend that California consumers will use and consume Seaweed Salad, thereby
17 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
18 Defendants are selling Seaweed Salad under a brand or trademark that is owned or
19 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
20 Lead into Seaweed Salad or knowingly caused Lead to be created in Seaweed Salad;
21 have covered, obscured or altered a warning label that has been affixed to Seaweed Salad
22 by the manufacturer, producer, packager, importer, supplier or distributor of Seaweed
23 Salad; have received a notice and warning materials for exposure from Seaweed Salad
24 without conspicuously posting or displaying the warning materials; and/or have actual
25 knowledge of potential exposure to Lead from Seaweed Salad. Defendants thereby
26 violated Proposition 65.

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

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

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

16 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to Lead from Seaweed Salad, pursuant to
18 Health and Safety Code Section 25249.7(b).

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

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22 **PRAYER FOR RELIEF**

23 Plaintiff demands against each of the Defendants as follows:

24 35. A permanent injunction mandating Proposition 65-compliant warnings;

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

26 37. Costs of suit;

27 38. Reasonable attorney fees and costs; and

28 39. Any further relief that the court may deem just and equitable.

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Dated: December 27, 2022

YEROUSHALMI & YEROUSHALMI*

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