

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

WISMETTAC ASIAN FOOD, INC.; DOES 1 THROUGH 100

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/31/2023 11:45 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By B. Haun, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CLEAN PRODUCT ADVOCATES LLC, A California Limited Liability Company

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

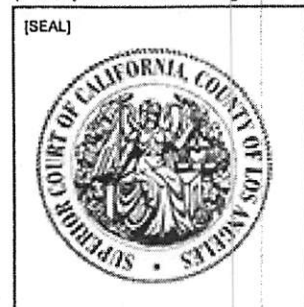
The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles County Superior Court
12720 Norwalk Boulevard, Norwalk, California 90605

CASE NUMBER
(Número del Caso): **23NWCV02775**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Clifford Law Firm, Elham Shabatian, David W. Slayton, Executive Officer/Clerk of Court, 5210 Wilshire Boulevard, Suite 800, Los Angeles, CA 90025; (310) 200-3227

DATE: 08/31/2023 Clerk, by B. Haun, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 CLIFFWOOD LAW FIRM
2 ELHAM SHABATIAN (SBN 221953)
3 12100 Wilshire Boulevard
4 Suite 800
5 Los Angeles, California 90025
6 Tel: (310) 200-3227
7 Email: ellie@cliffwoodlaw.com

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/31/2023 11:45 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By B. Haun, Deputy Clerk

5 Attorneys for Plaintiff
6 Clean Product Advocates, LLC

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 CLEAN PRODUCT ADVOCATES LLC, a)
11 California Limited Liability)
12 Company,)

13 PLAINTIFF,)

14 vs.)

15 WISMETTAC ASIAN FOOD, INC.;)
16 DOES 1 Through 100,)

17 DEFENDANTS.)

23NWCV02775
Case No. ~~2022001300~~
Case No. ~~2022001100~~

) COMPLAINT FOR PENALTY AND
) INJUNCTION

) Violation of Proposition 65,
) the Safe Drinking Water and
) Toxic Enforcement Act of 1986
) (Health & Safety Code Sections
) 25249.5, et. seq.)

) ACTION IS AN UNLIMITED CIVIL
) CASE (exceeds \$25,000.00)

1 INTRODUCTION

2 1. This Complaint is a representative action brought by
3 Clean Product Advocates, LLC ("Plaintiff" or "CPA") in the
4 public interest of the citizens of the State of California (the
5 "People"). Plaintiff seeks to remedy Defendants' failure to
6 inform the People of exposure to CADMIUM, a known carcinogen.
7 Defendants continue to expose consumers to CADMIUM by either
8 manufacturing, importing, selling and/or distributing food
9 products including, but not limited to, "Frozen Cuttlefish
10 Fillet (SK-Mongo)" ("Source") in the first cause of action and
11 "Crab Shumai Dumpling" ("Source") in the second cause of action.
12 Defendants therefore know and intend that customers will ingest
13 products containing CADMIUM under California's Safe Drinking
14 Water and Toxic Enforcement Act of 1986, and California Health
15 and Safety Code sections 25249.6 et. seq. ("Proposition 65"),
16 "[n]o person in the course of doing business shall knowingly and
17 intentionally expose any individual to a chemical known to the
18 state to cause cancer or reproductive toxicity without first
19 giving clear and reasonable warning to such individual"
20 (Health & Safety Code Section 25249.6).

22 2. California has identified and listed CADMIUM as a
23 chemical known to cause cancer as early as October 1, 1992, and
24 as a chemical known to cause developmental/reproductive toxicity
25 on February 27, 1987.

1 3. Defendants have failed to sufficiently warn consumers and
2 individuals in California about potential exposure to CADMIUM in
3 connection with Defendants' manufacture, import, sale, or
4 distribution of Products in violation of Proposition 65.

5 4. Plaintiff seeks injunctive relief compelling Defendants
6 to sufficiently warn consumers in California before exposing
7 them to CADMIUM in Products (Health & Safety Code Section
8 25249.7(a)). Plaintiff also seeks civil penalties against
9 Defendants for their violations of Proposition 65 along with
10 reasonable attorney's fees and legal costs (Health & Safety Code
11 Section 25249.7(b)).

12 **PARTIES**

13 5. Plaintiff CPA is an LLC operating in the State
14 of California dedicated to protecting the health of California
15 citizens through the elimination or reduction of toxic exposure
16 from consumer products. It brings this action in the public
17 interest pursuant to Health & Safety Code Section 25249.7.
18

19 6. Defendant Wismettac Asian Foods, Inc. ("WAF") is
20 a California corporation that either manufactures and/or
21 imports, and/or sells and/or distributes Products in Los Angeles
22 County and throughout the State of California, within the
23 meaning of Health & Safety Code Section 25249.11.

1 7. Defendants DOES 1 through 100, inclusive, are sued
2 herein under fictitious names. Their true names and capacities
3 are unknown to Plaintiff. When their true names and capacities
4 are ascertained, plaintiff will amend this complaint by
5 inserting their true names and capacities herein. Plaintiff is
6 informed and believes and thereon alleges, that each of the
7 fictitiously named defendants is responsible in some manner for
8 the occurrences alleged in this complaint and that Plaintiff's
9 damages as alleged in this complaint were proximately caused by
10 such defendants.
11

12 8. Plaintiff is informed and believes and thereon
13 alleges, that at all times alleged in this complaint, each
14 defendant was the agent, alter ego, servant, joint venturer,
15 joint employer and/or employee, of each of the remaining
16 defendants, and in doing the things hereinafter alleged, was
17 acting within the course and scope of said relationships and
18 with the permission and consent of all other co-defendants. All
19 conduct was also ratified by Defendants and each of them.
20

21 **JURISDICTION AND VENUE**

22 9. California Constitution Article VI, Section 10, grants
23 the Superior Court original jurisdiction in all cases except
24 those given by statute to other trial courts. The Health and
25 Safety Code statutes upon which this action is based does not
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1 give jurisdiction to any other Court. As such, this Court has
2 jurisdiction over this action.

3 10. Venue is proper in Los Angeles County Superior Court
4 pursuant to Code of Civil Procedure Sections 394, 395 and 395.5
5 as wrongful conduct as alleged in this complaint has occurred
6 and continues to occur in this County.

7 11. Defendants have sufficient minimum contacts in the
8 State of California or otherwise purposefully avail themselves
9 of the California market. Exercising jurisdiction over
10 Defendants would therefore be consistent with traditional
11 notions of fair play and substantial justice.
12

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65 - Against all Defendants**

16
17 12. Plaintiff incorporates by reference herein, each and
18 every allegation set forth above in this complaint.

19 13. Proposition 65 mandates that California citizens be
20 informed about exposures to chemicals that cause cancer, birth
21 defects, and other reproductive harm.
22

23 14. More than sixty days prior to the filing of this
24 lawsuit naming each Defendant, Plaintiff issued a 60-Day Notice
25 Of Violation dated June 21, 2022 ("Notice") as required by and
26 in compliance with Proposition 65. Plaintiff provided said
27 Notice to the various required public enforcement agencies along
28

1 with a Certificate of Merit. The Notice alleged that Defendants
2 violated Proposition 65 by failing to sufficiently warn
3 consumers in California of the health hazards associated with
4 exposure to CADMIUM contained in their Products.

5 15. The appropriate public enforcement agencies provided
6 with the Notice failed to commence and diligently prosecute a
7 cause of action against Defendants.

8 16. At all times relevant herein, Defendants manufactured
9 and/or imported and/or sold and/or distributed Products,
10 including Frozen Cuttlefish Fillet (SK-Mongo) containing
11 CADMIUM in violation of Health and Safety Code Sections 25249.6
12 et. seq. Plaintiff is informed and believes and thereon alleges
13 that such violations have continued after receipt of the Notice
14 described above and such conduct will continue to occur into the
15 future.

16 17. In manufacturing, importing, selling and/or
17 distributing Products, Defendants failed to provide a clear and
18 reasonable warning to consumers in the State of California who
19 may be exposed to CADMIUM through reasonably foreseeable use of
20 the Products.

21 18. The Products exposed individuals to CADMIUM through
22 direct ingestion of the product described in paragraph 16 of
23 this complaint. This exposure is a natural and foreseeable
24 consequence of Defendants placing the Products into the stream
25
26

1 of commerce. As such Defendants intend that consumers will
2 ingest said Products, exposing them to CADMIUM.

3 19. Defendants knew or should have known that their
4 Products contained CADMIUM and exposed individuals to CADMIUM as
5 described above in this complaint. The Notice described above in
6 this complaint informed Defendants of the presence of CADMIUM in
7 their products. Likewise, media coverage concerning CADMIUM and
8 related chemicals in consumer products provided "Constructive
9 Notice" to Defendants. Defendants' actions, therefore, were
10 deliberate and not accidental.
11

12 20. Individuals exposed to CADMIUM contained in
13 Defendants' Products through direct ingestion resulting from
14 reasonably foreseeable use of the Products have suffered and
15 continue to suffer irreparable harm. There is no other plain,
16 speedy or adequate remedy at law other than the relief requested
17 in this complaint.
18

19 21. Defendants are liable for a maximum civil penalty of
20 \$2,500.00 per day for each violation of Proposition 65 pursuant
21 to Health and Safety Code Section 252497(b). Injunctive relief
22 is also appropriate pursuant to Health and Safety Code Section
23 25249.7(a).
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SECOND CAUSE OF ACTION

(Violation of Proposition 65 - Against all Defendants)

22. Plaintiff incorporates by reference herein, each and every allegation set forth above in paragraphs 1 through 11 of this complaint.

23. Proposition 65 mandates that California citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.

24. More than sixty days prior to the filing of this lawsuit naming each Defendant, Plaintiff issued a 60-Day Notice Of Violation dated June 1, 2022 ("Notice") as required by and in compliance with Proposition 65. Plaintiff provided said Notice to the various required public enforcement agencies along with a Certificate of Merit. The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposure to CADMIUM contained in their products.

25. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendants.

26. At all times relevant herein, Defendants manufactured and/or imported and/or sold and/or distributed Products including Crab Shumai Dumpling, containing CADMIUM in violation of Health and Safety Code Sections 25249.6 et. seq. Plaintiff is

1 informed and believes and thereon alleges that such violations
2 have continued after receipt of the Notice described above
3 and such conduct will continue to occur into the future.

4 27. In manufacturing, importing, selling and/or
5 distributing Products, Defendants failed to provide a clear and
6 reasonable warning to consumers in the State of California who
7 may be exposed to CADMIUM through reasonably foreseeable use of
8 the Products.

9 28. The Products exposed individuals to CADMIUM through
10 direct ingestion of the product described in paragraph 29 of
11 this complaint. This exposure is a natural and foreseeable
12 consequence of Defendants placing the Products into the stream
13 of commerce. As such Defendants intend that consumers will
14 ingest said Products, exposing them to CADMIUM.

15 29. Defendants knew or should have known that their
16 Products contained CADMIUM and exposed individuals to CADMIUM as
17 described above in this complaint. The Notice described above in
18 this complaint informed Defendants of the presence of CADMIUM in
19 their products. Likewise, media coverage concerning CADMIUM and
20 related chemicals in consumer products provided "Constructive
21 Notice" to Defendants. Defendants' actions, therefore, were
22 deliberate and not accidental.
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1 30. Individuals exposed to CADMIUM contained in
2 Defendants' Products through direct ingestion resulting from
3 reasonably foreseeable use of the Products have suffered and
4 continue to suffer irreparable harm. There is no other plain,
5 speedy or adequate remedy at law other than the relief requested
6 in this complaint.

7 31. Defendants are liable for a maximum civil penalty of
8 \$2,500.00 per day for each violation of Proposition 65 pursuant
9 to Health and Safety Code Section 252497(b). Injunctive relief
10 is also appropriate pursuant to Health and Safety Code Section
11 25249.7(a).
12

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for judgment against Defendants,
15 and each of them, as follows pursuant to all causes of action:

16 1. Civil penalties in the amount of \$2,500.00 per day for
17 each violation of the law as described above in this complaint.
18 Plaintiff alleges that damages total a minimum of \$1,000,000.00
19 for each cause of action;
20

21 2. A preliminary and permanent injunction against Defendants
22 from manufacturing, importing, selling and/or distributing
23 Products in California without providing a clear and reasonable
24 warning as required by Proposition 65 and related regulations;

25 3. Reasonable attorney's fees and costs of suit;

26 4. Pre-Judgement interest as allowed by law; and
27

5. Such other and further relief as may be just and proper.

Respectfully Submitted:

Dated: August 29, 2023

CLIFFWOOD LAW FIRM,

By: Elham Shabatian
Elham Shabatian
Attorney for Plaintiff
Clean Product Advocates LLC

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