

**SUMMONS
(CITACION JUDICIAL)**

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

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

AQUA STAR; AQUA STAR (USA) CORP.; WINCO FOODS; WINCO FOODS, LLC; DOES 1 - 100

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/30/2023 8:36 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By N. Alvarez, 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
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): 23STCV15294

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):
Elham Shabatian SBN 221953; Cliffwood Law Firm PC; 12100 Wilshire Boulevard, Suite 800, Los Angeles, Ca 90025; (310) 200-3227

DATE: 06/30/2023 David W. Slayton, Executive Officer/Clerk of Court N. Alvarez, 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

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.50 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

1 CLIFFWOOD LAW FIRM PC
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

8 Attorneys for Plaintiff
9 Clean Product Advocates, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

23STCV15294

CLEAN PRODUCT ADVOCATES LLC, a)
California limited liability)
Company,)

PLAINTIFF,)

vs.)

AQUA STAR; AQUA STAR (USA))
CORP.; WINCO FOODS; WINCO)
FOODS, LLC; DOES 1 - 100,)

DEFENDANTS.)

Case No. 2022-01571

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, and/or importing, and/or selling and/or
9 distributing food products including, but not limited to, "Wild
10 Calamari Rings & Tentacles" ("Source"). Defendants therefore
11 know and intend that customers will ingest products containing
12 CADMIUM.

13
14 2. Under California's Safe Drinking Water and Toxic
15 Enforcement Act of 1986, and California Health and Safety Code
16 sections 25249.6 et. seq. ("Proposition 65"), "[n]o person in
17 the course of doing business shall knowingly and intentionally
18 expose any individual to a chemical known to the state to cause
19 cancer or reproductive toxicity without first giving clear and
20 reasonable warning to such individual " (Health & Safety
21 Code Section 25249.6).

22 3. California has identified and listed CADMIUM as
23 a chemical known to cause cancer as early as on or about October
24 1, 1992, and as a chemical known to cause developmental/repro-
25 ductive toxicity on or about February 27, 1987.

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

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

13 **PARTIES**

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

19 7. Defendants Aqua Star ("AS") and Aqua Star (USA) Corp.,
20 are business entities, that either manufacture and/or import,
21 and/or sell and/or distribute Products in Los Angeles County and
22 throughout the State of California, within the meaning of Health
23 & Safety Code Section 25249.11.
24

1 8. Defendants Winco Foods, LLC and Winco Foods ("Winco")
2 are business entities that either manufacture and/or import,
3 and/or sell and/or distribute Products in Los Angeles County and
4 throughout the State of California, within the meaning of Health
5 & Safety Code Section 25249.11.
6

7 9. Defendants DOES 1 through 100, inclusive, are sued
8 herein under fictitious names. Their true names and capacities
9 are unknown to Plaintiff. When their true names and capacities
10 are ascertained, plaintiff will amend this complaint by
11 inserting their true names and capacities herein. Plaintiff is
12 informed and believes and thereon alleges, that each of the
13 fictitiously named defendants is responsible in some manner for
14 the occurrences alleged in this complaint and that Plaintiff's
15 damages as alleged in this complaint were proximately caused by
16 such defendants.
17

18 10. Plaintiff is informed and believes and thereon
19 alleges, that at all times alleged in this complaint, each
20 defendant was the agent, alter ego, servant, joint venturer,
21 joint employer and/or employee, of each of the remaining
22 defendants, and in doing the things hereinafter alleged, was
23 acting within the course and scope of said relationships and
24 with the permission and consent of all other co-defendants. All
25 conduct was also ratified by Defendants and each of them.
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JURISDICTION AND VENUE

1
2 11. California Constitution Article VI, Section 10, grants
3 the Superior Court original jurisdiction in all cases except
4 those given by statute to other trial courts. The Health and
5 Safety Code statutes upon which this action is based do not give
6 jurisdiction to any other Court. As such, this Court has
7 jurisdiction over this action.

8
9 12. Venue is proper in Los Angeles County Superior Court
10 pursuant to Code of Civil Procedure Sections 394, 395 and 395.5
11 as wrongful conduct as alleged in this complaint has occurred
12 and continues to occur in this County.

13
14 13. Defendants have sufficient minimum contacts in the
15 State of California or otherwise purposefully avail themselves
16 of the California market. Exercising jurisdiction over
17 Defendants would therefore be consistent with traditional
18 notions of fair play and substantial justice.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against all Defendants

21
22 14. Plaintiff incorporates by reference herein, each and
23 every allegation set forth above in this complaint.

24
25 15. Proposition 65 mandates that California citizens be
26 informed about exposures to chemicals that cause cancer, birth
27 defects, and other reproductive harm.

1 16. More than sixty days prior to the filing of this
2 lawsuit naming each Defendant, Plaintiff issued a 60-Day Notice
3 Of Violation dated July 12, 2022 ("Notice") as required by and
4 in compliance with Proposition 65. Plaintiff provided said
5 Notice to the various required public enforcement agencies along
6 with a Certificate of Merit. The Notice alleged that Defendants
7 violated Proposition 65 by failing to sufficiently warn
8 consumers in California of the health hazards associated with
9 exposure to CADMIUM contained in their Products.

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

13 18. At all times relevant herein, Defendants either
14 manufactured and/or imported and/or sold and/or distributed
15 Products containing CADMIUM, including, but not limited to, the
16 Product named "Wild Calamari Rings & Tentacles" in violation of
17 Health and Safety Code Sections 25249.6 et. seq. Plaintiff is
18 informed and believes and thereon alleges that such violations
19 have continued after receipt of the Notice described above and
20 such conduct will continue to occur into the future.

21 19. In either manufacturing, importing, selling and/or
22 distributing Products, including, but not limited to, "Wild
23 Calamari Rings & Tentacles", Defendants failed to provide a
24 clear and reasonable warning to consumers in the State of
25

1 California who may be exposed to CADMIUM through reasonably
2 foreseeable use of the Products.

3 20. The Products exposed individuals to CADMIUM through
4 direct ingestion. This exposure is a natural and foreseeable
5 consequence of Defendants placing the Products into the stream
6 of commerce. As such Defendants intend that consumers will
7 ingest said Products, exposing them to CADMIUM.

8 21. Defendants knew or should have known that their
9 Products contained CADMIUM and exposed individuals to CADMIUM as
10 described above in this complaint. The Notice described above in
11 this complaint informed Defendants of the presence of CADMIUM in
12 their products. Likewise, media coverage concerning CADMIUM and
13 related chemicals in consumer products provided "Constructive
14 Notice" to Defendants. Defendants' actions, therefore, were
15 deliberate and not accidental.
16

17 22. Individuals exposed to CADMIUM contained in
18 Defendants' Products through direct ingestion resulting from
19 reasonably foreseeable use of the Products have suffered and
20 continue to suffer irreparable harm. There is no other plain,
21 speedy or adequate remedy at law other than the relief requested
22 in this complaint.
23

24 23. Defendants are liable for a maximum civil penalty of
25 \$2,500.00 per day for each violation of Proposition 65 pursuant
26
27
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1 to Health and Safety Code Section 252497(b). Injunctive relief
2 is also appropriate pursuant to Health and Safety Code Section
3 25249.7(a).

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for judgment against Defendants,
6 and each of them, as follows:

7 1. Civil penalties in the amount of \$2,500.00 per day for
8 each violation of the law as described above in this complaint.

9 Plaintiff alleges that damages total a minimum of \$1,000,000.00;
10

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

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

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

17 5. Such other and further relief as may be just and proper.
18

19 Respectfully Submitted:

20 Dated: June 29, 2023

CLIFFWOOD LAW FIRM,

21
22
23 By: 

24 Elham Shabatian
25 Attorney for Plaintiff
26 Clean Product Advocates LLC
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