

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroshalmi.com

3 **YERUSHALMI & YERUSHALMI***

9100 Wilshire Boulevard, Suite 240W

3 Beverly Hills, California 90212

4 Telephone: (310) 623-1926

4 Facsimile: (310) 623-1930

5 Attorneys for Plaintiff,

6 CONSUMER ADVOCACY GROUP, INC.

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

8 **COUNTY OF LOS ANGELES**

10
11 CONSUMER ADVOCACY GROUP, INC.,
12 in the public interest,

13 Plaintiff,

14 v.

15 NORTHERN FOOD I/E INC., a New York
16 Corporation;

17 AMAZON.COM SERVICES LLC, a
18 Delaware Limited Liability Company;

19 SHANGHAI WHOLESALE LLC, a
20 Minnesota Limited Liability Company;
and DOES 1-20,

21 Defendants.

CASE NO. **24STCV30415**

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 \$35,000)

22
23
24
25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
26 against defendants NORTHERN FOOD I/E INC; AMAZON.COM SERVICES LLC;
27 SHANGHAI WHOLESALE LLC, and DOES 1-20 as follows:
28

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 NORTHERN FOOD I/E INC (“NORTHERN”) is a New York corporation, registered to do business in New York, and doing business in the State of California at all relevant times herein.
3. Defendant AMAZON.COM SERVICES LLC (“AMAZON”) is a Delaware Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Defendant SHANGHAI WHOLESALE LLC (“SHANGHAI”) is a Minnesota Limited Liability Company, registered to do business in Minnesota, and doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, 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.
6. At all times mentioned herein, the term “Defendants” includes NORTHERN, AMAZON, SHANGHAI and DOES 1-20.
7. 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.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other

1 Defendants. In conducting the activities alleged in this Complaint, each of the
2 Defendants was acting within the course and scope of this agency, service, or
3 employment, and was acting with the consent, permission, and authorization of each of
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint
5 were ratified and approved by every other Defendant or their officers or managing
6 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
7 alleged wrongful conduct of each of the other Defendants.

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

12 **JURISDICTION**

- 13 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
14 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
15 those given by statute to other trial courts. This Court has jurisdiction over this action
16 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
17 violations of Proposition 65 in any Court of competent jurisdiction.
- 18 11. This Court has jurisdiction over Defendants named herein because Defendants either
19 reside or are located in this State or are foreign corporations authorized to do business in
20 California, are registered with the California Secretary of State, or who do sufficient
21 business in California, have sufficient minimum contacts with California, or otherwise
22 intentionally avail themselves of the markets within California through their
23 manufacture, distribution, promotion, marketing, or sale of their products within
24 California to render the exercise of jurisdiction by the California courts permissible
25 under traditional notions of fair play and substantial justice.
- 26 12. Venue is proper in the County of Los Angeles because one or more of the instances of
27 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
28

1 because Defendants conducted, and continue to conduct, business in the County of Los
2 Angeles with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

4 13. In 1986, California voters approved an initiative to address growing concerns about
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
10 from contamination, to allow consumers to make informed choices about the products
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see
12 fit.

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known
14 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
15 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
16 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
17 other controls that apply to Proposition 65-listed chemicals.

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

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
26 25249.7. "Threaten to violate" means "to create a condition in which there is a
27 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

28

1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 17. Plaintiff identified certain practices of manufacturers and distributors of Mushrooms,
4 Bamboo Shoots of exposing, knowingly and intentionally, persons in California to Lead
5 and Lead Compounds, Cadmium and Cadmium Compounds, of such products without
6 first providing clear and reasonable warnings of such to the exposed persons prior to the
7 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

8 18. On October 1, 1992, the Governor of California added Lead and Lead Compounds
9 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
10 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
11 twenty (20) months after addition of Lead to the list of chemicals known to the State to
12 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
13 discharge prohibitions.

14 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals
15 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
16 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
17 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
18 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
19 the State to cause developmental and reproductive toxicity, Lead became fully subject to
20 Proposition 65 warning requirements and discharge prohibitions.

21 20. On October 1, 1987 the Governor of California added Cadmium and Cadmium
22 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
23 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
24 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
25 chemicals known to the State to cause cancer, Cadmium became fully subject to
26 Proposition 65 warning requirements and discharge prohibitions.

1 21. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
2 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
3 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
4 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
5 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
6 to the State to cause developmental and reproductive toxicity, Cadmium became fully
7 subject to Proposition 65 warning requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

9 22. Plaintiff served the following notices for alleged violations of Health and Safety Code
10 Section 25249.6, concerning consumer products exposures:

- 11 a. On or about August 3, 2022, Plaintiff gave notice of alleged violations of Health
12 and Safety Code Section 25249.6, concerning consumer products exposures
13 subject to a private action to AMAZON, and to the California Attorney General,
14 County District Attorneys, and City Attorneys for each city containing a
15 population of at least 750,000 people in whose jurisdictions the violations
16 allegedly occurred, concerning the Mushrooms.
- 17 b. On or about October 3, 2023, Plaintiff gave notice of alleged violations of
18 Health and Safety Code Section 25249.6, concerning consumer products
19 exposures subject to a private action to NORTHERN, SHANGHAI, and to the
20 California Attorney General, County District Attorneys, and City Attorneys for
21 each city containing a population of at least 750,000 people in whose
22 jurisdictions the violations allegedly occurred, concerning the Bamboo Shoots.

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

1 24. 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 Lead and
5 Cadmium, the subject Proposition 65-listed chemical of this action. Based on that
6 information, the attorney for Plaintiff who executed the Certificate of Merit believed
7 there was a reasonable and meritorious case for this private action. The attorney for
8 Plaintiff attached to the Certificate of Merit served on the Attorney General the
9 confidential factual information sufficient to establish the basis of the Certificate of
10 Merit.

11 25. 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 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
15 gave notice of the alleged violations to NORTHERN, AMAZON, SHANGHAI, and the
16 public prosecutors referenced in Paragraph 22.

17 27. 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 AMAZON, and DOES**
22 **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 **Mushrooms**

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

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

1 limited to: "Mushroom House"; "Wild Forest Mushroom Mix"; "Net Wt. 1.5 oz (42 g)";
2 "Best By 04/16/2023"; "Grown and Packed by New Tiger International Inc."; "Product
3 of PRC"; "X002V2EF3T"; "UPC 7 54351 45130 0".

4 30. Mushrooms contains Lead and Cadmium.

5 31. Defendants knew or should have known that Lead and Cadmium have been identified by
6 the State of California as a chemical known to cause cancer, and reproductive toxicity
7 and therefore was subject to Proposition 65 warning requirements. Defendants were also
8 informed of the presence of Lead and Cadmium in Mushrooms within Plaintiff's notice
9 of alleged violations further discussed above at Paragraph 22a.

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

17 33. Plaintiff is informed, believes, and thereon alleges that between August 8, 2019, and the
18 present, each of the Defendants knowingly and intentionally exposed California
19 consumers and users of Mushrooms, which Defendants manufactured, distributed, or
20 sold as mentioned above, to Lead and Cadmium, without first providing any type of clear
21 and reasonable warning of such to the exposed persons before the time of exposure.
22 Defendants have distributed and sold Mushrooms in California. Defendants know and
23 intend that California consumers will use and consume Mushrooms, thereby exposing
24 them to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
25 that Defendants are selling Mushrooms under a brand or trademark that is owned or
26 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
27 Lead and Cadmium into Mushrooms or knowingly caused Lead and Cadmium to be
28

1 created in Mushrooms; have covered, obscured or altered a warning label that has been
2 affixed to Mushrooms by the manufacturer, producer, packager, importer, supplier or
3 distributor of Mushrooms; have received a notice and warning materials for exposure
4 from Mushrooms without conspicuously posting or displaying the warning materials;
5 and/or have actual knowledge of potential exposure to Lead and Cadmium from
6 Mushrooms. Defendants thereby violated Proposition 65.

7 34. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
8 Persons sustain exposures by eating and consuming Mushrooms.

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

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

19 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Lead and Cadmium from Mushrooms,
21 pursuant to Health and Safety Code Section 25249.7(b).

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

24
25
26
27
28

1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against NORTHERN,**
3 **SHANGHAI, and DOES 11-20 for Violations of Proposition 65, The Safe Drinking**
4 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
5 ***seq.*))**

6 **Bamboo Shoots**

7 39. Plaintiff repeats and incorporates by reference paragraphs 1 through 38 of this complaint
8 as though fully set forth herein.

9 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Saline Bamboo Shoot (“Bamboo Shoot”), including
11 but not limited to: “YEFENG”; “SALINE BAMBOO SHOOT”; “NET WT. (400G)”;
12 “BEST BEFORE SEP 26. 2024”; “7 54351 19335 4”.

13 41. Bamboo Shoot contains Lead.

14 42. Defendants knew or should have known that Lead has been identified by the State of
15 California as a chemical known to cause cancer, and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of Lead in Bamboo Shoot within Plaintiff’s notice of alleged violations
18 further discussed above at Paragraph 22b.

19 43. Plaintiff’s allegations regarding Bamboo Shoot concerns “[c]onsumer products
20 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
22 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
23 *25602(b)*. Bamboo Shoots are consumer products, and, as mentioned herein, exposures
24 to Lead took place as a result of such normal and foreseeable consumption and use.

25 44. Plaintiff is informed, believes, and thereon alleges that between October 3, 2020, and the
26 present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Bamboo Shoot, which Defendants manufactured, distributed, or
28 sold as mentioned above, to Lead, without first providing any type of clear and
reasonable warning of such to the exposed persons before the time of exposure.

1 Defendants have distributed and sold Bamboo Shoot in California. Defendants know
2 and intend that California consumers will use and consume Bamboo Shoot, thereby
3 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
4 Defendants are selling Bamboo Shoot under a brand or trademark that is owned or
5 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
6 Lead into Bamboo Shoot or knowingly caused Lead to be created in Bamboo Shoot;
7 have covered, obscured or altered a warning label that has been affixed to Bamboo Shoot
8 by the manufacturer, producer, packager, importer, supplier or distributor of Bamboo
9 Shoot; have received a notice and warning materials for exposure from Bamboo Shoot
10 without conspicuously posting or displaying the warning materials; and/or have actual
11 knowledge of potential exposure to Lead from Bamboo Shoot. Defendants thereby
12 violated Proposition 65.

13 45. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
14 Persons sustain exposures by eating and consuming Bamboo Shoot.

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

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

24 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to Lead from Bamboo Shoot, pursuant to
26 Health and Safety Code Section 25249.7(b).

27
28

1 49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.
3

4
5 **PRAYER FOR RELIEF**

6 Plaintiff demands against each of the Defendants as follows:

- 7 1. A permanent injunction mandating Proposition 65-compliant warnings;
8 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
9 3. Costs of suit;
10 4. Reasonable attorney fees and costs; and
11 5. Any further relief that the court may deem just and equitable.
12

13 Dated: November 18, 2024

YEROUSHALMI & YEROUSHALMI*

14
15 */s/ Reuben Yeroushalmi*

16 _____
17 Reuben Yeroushalmi
18 Attorneys for Plaintiff,
19 CONSUMER ADVOCACY GROUP, INC.
20
21
22
23
24
25
26
27
28