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Superior Court of California,
County of Alameda

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By: Cheryl Clark,
Deputy Clerk

1 Reuben Yeroushalmi (SBN 193981)
reuben@yeroushalmi.com
2 **YEROUSHALMI & YEROUSHALMI***
9100 Wilshire Boulevard, Suite 240W
3 Beverly Hills, California 90212
4 Telephone: (310) 623-1926
Facsimile: (310) 623-1930

5 Attorneys for Plaintiff,
6 CONSUMER ADVOCACY GROUP, INC.

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

8 **COUNTY OF ALAMEDA**

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

12 Plaintiff,

13 v.
14

15 WANG GLOBALNET, a California
Corporation;
16 and DOES 1-10,

17 Defendants.
18

CASE NO. 22CV023977

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 WANG GLOBALNET 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 WANG GLOBALNET (“WANG GLOBALNET”) is a California
4 Corporation qualified to do business in California and doing business in the State of
5 California at all 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 WANG GLOBALNET
13 and DOES 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 Dried Kelp of
22 exposing, knowingly and intentionally, persons in California to Inorganic Arsenic
23 Compounds and Inorganic Arsenic Oxides of such products without first providing clear
24 and reasonable warnings of such to the exposed persons prior to the time of exposure.
25 Plaintiff later discerned that Defendants engaged in such practice.

26 16. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
27 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
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1 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
2 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
3 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
4 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
5 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
6 Oxides is hereinafter referred to as “Arsenic”.

7 **SATISFACTION OF PRIOR NOTICE**

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

- 10 a. On or about September 1, 2022, Plaintiff gave notice of alleged violations of
11 Health and Safety Code Section 25249.6, concerning consumer products
12 exposures subject to a private action to WANG GLOBALNET, and to the
13 California Attorney General, County District Attorneys, and City Attorneys for
14 each city containing a population of at least 750,000 people in whose
15 jurisdictions the violations allegedly occurred, concerning the Dried Kelp.

16 18. Before sending the notice of alleged violations, Plaintiff investigated the consumer
17 products involved, the likelihood that such products would cause users to suffer
18 significant exposures to Inorganic Arsenic Compounds and Inorganic Arsenic Oxides,
19 and the corporate structure of each of the Defendants.

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

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

6 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notice of the alleged violations to WANG GLOBALNET, and the public
8 prosecutors referenced in Paragraph 17.

9 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
10 any applicable district attorney or city attorney has commenced and is diligently
11 prosecuting an action against the Defendants.

12 **FIRST CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against WANG GLOBALNET**
14 **and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and**
15 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

16 **Seaweed**

17 23. Plaintiff repeats and incorporates by reference paragraphs 1 through 22 of this complaint
18 as though fully set forth herein.

19 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Dried Kelp ("Seaweed"), including but not limited to
21 "Wang Korea"; "Dried Kelp"; "Net Wt. 56 g (2 oz)"; "2022.06.20"; "Produced in South
22 Korea"; "Item No. 00778"; "0 87703 00095 7".

23 25. Seaweed contains Inorganic Arsenic Compounds and Inorganic Arsenic Oxides.

24 26. Defendants knew or should have known that Inorganic Arsenic Compounds and
25 Inorganic Arsenic Oxides has been identified by the State of California as a chemical
26 known to cause developmental toxicity and therefore was subject to Proposition 65
27 warning requirements. Defendants were also informed of the presence of Inorganic
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1 Arsenic Compounds and Inorganic Arsenic Oxides in Seaweed within Plaintiff's notice
2 of alleged violations further discussed above at Paragraph 17a.

3 27. Plaintiff's allegations regarding Seaweed concerns "[c]onsumer products exposure[s],"
4 which "is an exposure that results from a person's acquisition, purchase, storage,
5 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
6 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

7 Seaweed is consumer products, and, as mentioned herein, exposures to Inorganic Arsenic
8 Compounds and Inorganic Arsenic Oxides took place as a result of such normal and
9 foreseeable consumption and use.

10 28. Plaintiff is informed, believes, and thereon alleges that between September 1, 2019 and
11 the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
13 mentioned above, to Inorganic Arsenic Compounds and Inorganic Arsenic Oxides,
14 without first providing any type of clear and reasonable warning of such to the exposed
15 persons before the time of exposure. Defendants have distributed and sold Seaweed in
16 California. Defendants know and intend that California consumers will use and consume
17 Seaweed, thereby exposing them to Inorganic Arsenic Compounds and Inorganic
18 Arsenic Oxides. Further, Plaintiff is
19 informed, believes, and thereon alleges that Defendants are selling Seaweed under a
20 brand or trademark that is owned or licensed by the Defendants or an entity affiliated
21 thereto; have knowingly introduced Inorganic Arsenic Compounds and Inorganic
22 Arsenic Oxides into Seaweed or knowingly caused Inorganic Arsenic Compounds and
23 Inorganic Arsenic Oxides to be created in Seaweed; have covered, obscured or altered a
24 warning label that has been affixed to Seaweed by the manufacturer, producer, packager,
25 importer, supplier or distributor of Seaweed; have received a notice and warning
26 materials for exposure from Seaweed without conspicuously posting or displaying the
27 warning materials; and/or have actual knowledge of potential exposure to Inorganic
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1 Arsenic Compounds and Inorganic Arsenic Oxides from Seaweed. Defendants thereby
2 violated Proposition 65.

3 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.

4 Persons sustain exposures by handling Seaweed without wearing gloves or any other
5 personal protective equipment, or by touching bare skin or mucous membranes with
6 gloves after handling Seaweed, as well as through direct and indirect hand to mouth
7 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
8 Seaweed.

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

16 31. 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 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Inorganic Arsenic Compounds and
21 Inorganic Arsenic Oxides from Seaweed, pursuant to Health and Safety Code Section
22 25249.7(b).

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

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26 **PRAYER FOR RELIEF**

27 Plaintiff demands against each of the Defendants as follows:
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- 1 34. A permanent injunction mandating Proposition 65-compliant warnings;
- 2 35. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
- 3 36. Costs of suit;
- 4 37. Reasonable attorney fees and costs; and
- 5 38. Any further relief that the court may deem just and equitable.

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7 Dated: December 15, 2022

YEROUSHALMI & YEROUSHALMI*

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9
10 /s/ Reuben Yeroushalmi
11 Reuben Yeroushalmi
12 Attorneys for Plaintiff,
13 CONSUMER ADVOCACY GROUP, INC.
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