

1 Reuben Yeroushalmi (SBN 193981)
reuben@yeroushalmi.com

2 **YEROUSHALMI & YEROUSHALMI***
3 9100 Wilshire Boulevard, Suite 240W
4 Beverly Hills, California 90212
5 Telephone: (310) 623-1926
6 Facsimile: (310) 623-1930

7 Attorneys for Plaintiff,
8 CONSUMER ADVOCACY GROUP, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 ROLAND FOODS, LLC, a Delaware
16 Limited Liability Company;
17 WALMART INC., a Delaware Corporation;
18 and DOES 1-10,

19 Defendants.

CASE NO. 23STCV08454

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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26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
27 defendants ROLAND FOODS, LLC; WALMART, INC., and DOES 1-10 as follows:
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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 ROLAND FOODS, LLC (“ROLAND”) 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.
3. Defendant WALMART INC. (“WALMART”) is a Delaware Corporation qualified to do business in California and doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, 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.
5. At all times mentioned herein, the term “Defendants” includes ROLAND, WALMART, and DOES 1-10.
6. 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.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing
3 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
4 alleged wrongful conduct of each of the other Defendants.

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

9 **JURISDICTION**

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

1 **BACKGROUND AND PRELIMINARY FACTS**

- 2 12. In 1986, California voters approved an initiative to address growing concerns about
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
8 from contamination, to allow consumers to make informed choices about the products
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see
10 fit.
- 11 13. Proposition 65 requires the Governor of California to publish a list of chemicals known
12 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
13 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
14 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
15 other controls that apply to Proposition 65-listed chemicals.
- 16 14. All businesses with ten (10) or more employees that operate or sell products in California
17 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
19 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
20 reasonable” warnings before exposing a person, knowingly and intentionally, to a
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 22 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
24 25249.7. "Threaten to violate" means "to create a condition in which there is a
25 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
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- 1 16. Plaintiff identified certain practices of manufacturers and distributors of Escargots of
2 exposing, knowingly and intentionally, persons in California to Lead and Lead
3 Compounds, Cadmium and Cadmium Compounds of such products without first
4 providing clear and reasonable warnings of such to the exposed persons prior to the time
5 of exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 6 17. On October 1, 1992 the Governor of California added Lead and Lead Compounds
7 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
8 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
9 twenty (20) months after addition of Lead to the list of chemicals known to the State to
10 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
11 discharge prohibitions.
- 12 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals
13 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
14 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
15 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
16 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
17 the State to cause developmental and reproductive toxicity, Lead became fully subject to
18 Proposition 65 warning requirements and discharge prohibitions.
- 19 19. On October 1, 1987 the Governor of California added Cadmium and Cadmium
20 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
21 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
22 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
23 chemicals known to the State to cause cancer, Cadmium became fully subject to
24 Proposition 65 warning requirements and discharge prohibitions.
- 25 20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
26 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
27 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
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1 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
2 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
3 to the State to cause developmental and reproductive toxicity, Cadmium became fully
4 subject to Proposition 65 warning requirements and discharge prohibitions.

5 **SATISFACTION OF PRIOR NOTICE**

6 21. Plaintiff served the following notices for alleged violations of Health and Safety Code
7 Section 25249.6, concerning consumer products exposures:

8 a. On or about December 22, 2022 Plaintiff gave notice of alleged violations of
9 Health and Safety Code Section 25249.6, concerning consumer products
10 exposures subject to a private action to ROLAND, WALMART, and to the
11 California Attorney General, County District Attorneys, and City Attorneys for
12 each city containing a population of at least 750,000 people in whose
13 jurisdictions the violations allegedly occurred, concerning the Escargots.

14 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
15 products involved, the likelihood that such products would cause users to suffer
16 significant exposures to Lead and Cadmium, and the corporate structure of each of the
17 Defendants.

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

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

4 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notice of the alleged violations to ROLAND, WALMART, and the public
6 prosecutors referenced in Paragraph 29a.

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

10 **FIRST CAUSE OF ACTION**

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

14 **Snail Products**

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

17 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Escargots ("Escargots"), including but not limited or
19 identified as: "Roland"; "Escargots"; "Giant Snails"; "Net Wt. 7.76 oz. (220g)"; "Dr.
20 Wt. 4.4 oz. (125g)"; "1 Dozen"; "RLKDG"; "RLNK"; "V0215"; "UPC 0 41224 26014
21 6".

22 29. Escargots contains Lead and Cadmium.

23 30. Defendants knew or should have known that Lead and Cadmium has been identified by
24 the State of California as a chemical known to cause cancer, developmental and
25 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
26 Defendants were also informed of the presence of Lead and Cadmium in Escargots
27 within Plaintiff's notice of alleged violations further discussed above at Paragraph 29a.

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

7 32. Plaintiff is informed, believes, and thereon alleges that between December 22, 2019 and
8 the present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Escargots, which Defendants manufactured, distributed, or sold
10 as mentioned above, to Lead and Cadmium, without first providing any type of clear and
11 reasonable warning of such to the exposed persons before the time of exposure.

12 Defendants have distributed and sold Escargots in California. Defendants know and
13 intend that California consumers will use and consume Escargots, thereby exposing them
14 to Lead and Cadmium. Further, Plaintiff is
15 informed, believes, and thereon alleges that Defendants are selling Escargots under a
16 brand or trademark that is owned or licensed by the Defendants or an entity affiliated
17 thereto; have knowingly introduced Lead and Cadmium into Escargots or knowingly
18 caused Lead and Cadmium to be created in Escargots; have covered, obscured or altered
19 a warning label that has been affixed to Escargots by the manufacturer, producer,
20 packager, importer, supplier or distributor of Escargots; have received a notice and
21 warning materials for exposure from Escargots without conspicuously posting or
22 displaying the warning materials; and/or have actual knowledge of potential exposure to
23 Lead and Cadmium from Escargots. Defendants thereby violated Proposition 65.

24 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by handling Escargots without wearing gloves or any other
26 personal protective equipment, or by touching bare skin or mucous membranes with
27 gloves after handling Escargots, as well as through direct and indirect hand to mouth
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1 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
2 Escargots.

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

10 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
12 violations alleged herein will continue to occur into the future.

13 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to Lead and Cadmium from Escargots,
15 pursuant to Health and Safety Code Section 25249.7(b).

16 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
17 filing this Complaint.

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19 **PRAYER FOR RELIEF**

20 Plaintiff demands against each of the Defendants as follows:

21 38. A permanent injunction mandating Proposition 65-compliant warnings;

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

23 40. Costs of suit;

24 41. Reasonable attorney fees and costs; and

25 42. Any further relief that the court may deem just and equitable.

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1 Dated: April 17, 2023

YEROUSHALMI & YEROUSHALMI*

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4 /s/ Reuben Yeroushalmi
5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 CONSUMER ADVOCACY GROUP, INC.
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