

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

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9 CONSUMER ADVOCACY GROUP, INC.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **COUNTY OF LOS ANGELES**

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 CCONMA, INC., a California Corporation;
19 and DOES 1-20,

20 Defendants.

CASE NO. **23STCV06774**

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 two causes of action
23 against defendants CCONMA, INC., and DOES 1-20 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 CCONMA, INC. (“CCONMA”) is a California Corporation qualified to do
4 business in California, and doing business in the State of California at all relevant times
5 herein.

6 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
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 CCONMA, and DOES 1-
13 20.

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 1-20, 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 Los Angeles because one or more of the instances of
18 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
19 because Defendants conducted, and continue to conduct, business in the County of Los
20 Angeles 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 Squid and
22 Roasted Seaweed of exposing, knowingly and intentionally, persons in California to
23 Lead and Lead Compounds, Cadmium and Cadmium Compounds of such products
24 without first providing clear and reasonable warnings of such to the exposed persons
25 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such
26 practice.

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1 16. On October 1, 1992 the Governor of California added Lead and Lead Compounds
2 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
3 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
4 twenty (20) months after addition of Lead to the list of chemicals known to the State to
5 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
6 discharge prohibitions.

7 17. On February 27, 1987, the Governor of California added Lead to the list of chemicals
8 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
9 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
10 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
11 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
12 the State to cause developmental and reproductive toxicity, Lead became fully subject to
13 Proposition 65 warning requirements and discharge prohibitions.

14 18. On October 1, 1987 the Governor of California added Cadmium and Cadmium
15 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
16 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
17 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
18 chemicals known to the State to cause cancer, Cadmium became fully subject to
19 Proposition 65 warning requirements and discharge prohibitions.

20 19. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
21 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
22 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
23 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
24 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
25 to the State to cause developmental and reproductive toxicity, Cadmium became fully
26 subject to Proposition 65 warning requirements and discharge prohibitions.

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SATISFACTION OF PRIOR NOTICE

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

- a. On or about December 2, 2022, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to CCONMA, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Dried Squid.
- b. On or about December 29, 2022, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to CCONMA, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Roasted Seaweed.

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

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

1 confidential factual information sufficient to establish the basis of the Certificate of
2 Merit.

3 23. 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 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notice of the alleged violations to CCONMA, and the public prosecutors referenced
8 in Paragraph 20.

9 25. 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 CCONMA, and DOES**
14 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
15 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

16 **Seafood Products**

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

19 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Dried Squid ("Dried Squid"), including but not
21 limited to "Haemalgeun Bunyoung"; "Stone-Plate Grilled Dried Squid"; "Seasoned
22 Dried Squid"; "Net Wt. 4.23 oz (120g)"; "Expiration Date: Nov. 14 2022"; "Importer:
23 Cconma Inc."; "Distributor: Cconma USA"; "Product of Korea"; "UPC 8 807087
24 320148".

25 28. Dried Squid contains Cadmium.

26 29. Defendants knew or should have known that Cadmium has been identified by the State
27 of California as a chemical known to cause cancer, and reproductive toxicity and
28 therefore was subject to Proposition 65 warning requirements. Defendants were also

1 informed of the presence of Cadmium in Dried Squid within Plaintiff's notice of alleged
2 violations further discussed above at Paragraph 20a.

3 30. Plaintiff's allegations regarding Dried Squid concerns "[c]onsumer products
4 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
5 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
6 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
7 *25602(b)*. Dried Squid are consumer products, and, as mentioned herein, exposures to
8 Cadmium took place as a result of such normal and foreseeable consumption and use.

9 31. Plaintiff is informed, believes, and thereon alleges that between December 2, 2019, and
10 the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Dried Squid, which Defendants manufactured, distributed, or
12 sold as mentioned above, to Cadmium, without first providing any type of clear and
13 reasonable warning of such to the exposed persons before the time of exposure.

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

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

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

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

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

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

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21 **SECOND CAUSE OF ACTION**

22 **(By CONSUMER ADVOCACY GROUP, INC. and against CCONMA, and DOES**
23 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
24 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

25 **Seaweed**

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

28 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Roasted Seaweed ("Seaweed"), including but not

1 limited to “Wando”; “Roasted Seasoned Seaweed”; “Net Wt. 8.82 oz (250g)”;
2 “Manufactured Nov. 15. 2021”; “Expiration Nov. 14. 2022”; “Importer: Cconma Inc.”;
3 “Product of Korea”; “UPC 8 809309 003116”.

4 39. Seaweed contains Lead and Cadmium.

5 40. Defendants knew or should have known that Lead and Cadmium has 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 Seaweed within Plaintiff's notice of
9 alleged violations further discussed above at Paragraph 20b.

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

14 Seaweed is consumer products, and, as mentioned herein, exposures to Lead and
15 Cadmium took place as a result of such normal and foreseeable consumption and use.

16 42. Plaintiff is informed, believes, and thereon alleges that between December 29, 2019, and
17 the present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
19 mentioned above, to Lead and Cadmium, without first providing any type of clear and
20 reasonable warning of such to the exposed persons before the time of exposure.

21 Defendants have distributed and sold Seaweed in California. Defendants know and
22 intend that California consumers will use and consume Seaweed, thereby exposing them
23 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
24 Defendants are selling Seaweed under a brand or trademark that is owned or licensed by
25 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
26 Cadmium into Seaweed or knowingly caused Lead and Cadmium to be created in
27 Seaweed; have covered, obscured or altered a warning label that has been affixed to

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1 Seaweed by the manufacturer, producer, packager, importer, supplier or distributor of
2 Seaweed; have received a notice and warning materials for exposure from Seaweed
3 without conspicuously posting or displaying the warning materials; and/or have actual
4 knowledge of potential exposure to Lead and Cadmium from Seaweed. Defendants
5 thereby violated Proposition 65.

6 43. The principal routes of exposure are through dermal contact, ingestion and inhalation.
7 Persons sustain exposures by handling Seaweed without wearing gloves or any other
8 personal protective equipment, or by touching bare skin or mucous membranes with
9 gloves after handling Seaweed, as well as through direct and indirect hand to mouth
10 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
11 Seaweed.

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

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

21 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to Lead and Cadmium from Seaweed,
23 pursuant to Health and Safety Code Section 25249.7(b).

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

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27 **PRAYER FOR RELIEF**

1 Plaintiff demands against each of the Defendants as follows:

2 48. A permanent injunction mandating Proposition 65-compliant warnings;

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

4 50. Costs of suit;

5 51. Reasonable attorney fees and costs; and

6 52. Any further relief that the court may deem just and equitable.

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8 Dated: March 28, 2023

YEROUSHALMI & YEROUSHALMI*

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10 *Reuben Yeroushalmi*

11 _____
12 Reuben Yeroushalmi
13 Attorneys for Plaintiff,
14 CONSUMER ADVOCACY GROUP, INC.
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