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9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 ASIA SUPERMARKET INC., a California  
17 Corporation;  
18 HONG SAR LLC DBA SHWE HINTHAR,  
19 an Indiana Limited Liability Company;  
20 and DOES 1-10,

21 Defendants.

CASE NO. **23CV054350**

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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24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against  
25 defendants ASIA SUPERMARKET INC., HONG SAR LLC DBA SHWE HINTHAR, and  
26 DOES 1-10 as follows:

27 **THE PARTIES**

- 1 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an  
2 organization qualified to do business in the State of California. CAG is a person within  
3 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting  
4 as a private attorney general, brings this action in the public interest as defined under  
5 Health and Safety Code Section 25249.7, subdivision (d).
- 6 2. Defendant ASIA SUPERMARKET INC. (“ASIA SUPERMARKET”) is a California  
7 Corporation qualified to do business in California and doing business in the State of  
8 California at all relevant times herein.
- 9 3. Defendant HONG SAR LLC DBA SHWE HINTHAR (“HONG SAR”) is an Indiana  
10 Limited Liability Company qualified to do business in Indiana and doing business in the  
11 State of California at all relevant times herein.
- 12 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,  
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
14 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
15 informed, believes, and thereon alleges that each fictitiously named defendant is  
16 responsible in some manner for the occurrences herein alleged and the damages caused  
17 thereby.
- 18 5. At all times mentioned herein, the term “Defendants” includes ASIA SUPERMARKET,  
19 HONG SAR, and DOES 1-10.
- 20 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
21 times mentioned herein have conducted business within the State of California.
- 22 7. Upon information and belief, at all times relevant to this action, each of the Defendants,  
23 including DOES 1-10, was an agent, servant, or employee of each of the other  
24 Defendants. In conducting the activities alleged in this Complaint, each of the  
25 Defendants was acting within the course and scope of this agency, service, or  
26 employment, and was acting with the consent, permission, and authorization of each of  
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
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1 were ratified and approved by every other Defendant or their officers or managing  
2 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the  
3 alleged wrongful conduct of each of the other Defendants.

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

### 8 JURISDICTION

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

### 26 BACKGROUND AND PRELIMINARY FACTS

- 1 12. In 1986, California voters approved an initiative to address growing concerns about  
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
7 from contamination, to allow consumers to make informed choices about the products  
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
9 fit.
- 10 13. Proposition 65 requires the Governor of California to publish a list of chemicals known  
11 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
12 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
13 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
14 other controls that apply to Proposition 65-listed chemicals.
- 15 14. All businesses with ten (10) or more employees that operate or sell products in California  
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
17 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
18 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
19 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
20 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 21 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
23 25249.7. "Threaten to violate" means "to create a condition in which there is a  
24 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
25 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
26 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 16. Plaintiff identified certain practices of manufacturers and distributors of Shrimp Paste of  
2 exposing, knowingly and intentionally, persons in California to Lead and Lead  
3 Compounds and Cadmium and Cadmium Compounds 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  
28

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 January 18, 2023, 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 ASIA SUPERMARKET, HONG SAR,  
11 and to the California Attorney General, County District Attorneys, and City  
12 Attorneys for each city containing a population of at least 750,000 people in  
13 whose jurisdictions the violations allegedly occurred, concerning the Shrimp  
14 Paste.

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

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

3 24. 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 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
7 gave notice of the alleged violations to ASIA SUPERMARKET, HONG SAR, and the  
8 public prosecutors referenced in Paragraph 21.

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

17 **Condiments**

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

20 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
21 distributor, promoter, or retailer of Shrimp Paste, including but not limited to • “Sein  
22 Hintar Brand”; “Shrimp Paste”; “Net Wt. 16 oz (454 g)”; “Manufactured by: Shwe  
23 Hinthar Yeik Mon Co., Ltd.”; “Distributed by: Time Mon Co., Ltd.”; “Imported by:  
24 Hong Sar LLC – Hinthar Inc.”; “MFD 9 Jun 21”; “Exp 8 Jun 23”; “Product of  
25 Myanmar”; “UPC 8 834000 127748”.

26 29. Shrimp Paste contains Lead and Cadmium.

27 30. Defendants knew or should have known that Lead and Cadmium has been identified by  
28 the State of California as a chemical known to cause cancer, and reproductive toxicity

1 and therefore was subject to Proposition 65 warning requirements. Defendants were also  
2 informed of the presence of Lead and Cadmium in Shrimp Paste within Plaintiff's notice  
3 of alleged violations further discussed above at Paragraph 21a.

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

11 32. Plaintiff is informed, believes, and thereon alleges that between January 18, 2020 and the  
12 present, each of the Defendants knowingly and intentionally exposed California  
13 consumers and users of Shrimp Paste, which Defendants manufactured, distributed, or  
14 sold as mentioned above, to Lead and Cadmium, without first providing any type of clear  
15 and reasonable warning of such to the exposed persons before the time of exposure.  
16 Defendants have distributed and sold Shrimp Paste in California. Defendants know and  
17 intend that California consumers will use and consume Shrimp Paste, thereby exposing  
18 them to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges  
19 that Defendants are selling Shrimp Paste under a brand or trademark that is owned or  
20 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced  
21 Lead and Cadmium into product or knowingly caused Lead and Cadmium to be created  
22 in Shrimp Paste; have covered, obscured or altered a warning label that has been affixed  
23 to Shrimp Paste by the manufacturer, producer, packager, importer, supplier or  
24 distributor of Shrimp Paste; have received a notice and warning materials for exposure  
25 from Shrimp Paste without conspicuously posting or displaying the warning materials;  
26 and/or have actual knowledge of potential exposure to Lead and Cadmium from Shrimp  
27 Paste. Defendants thereby violated Proposition 65.



1 33. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,  
2 inhalation, and trans-dermal absorption. Persons sustain exposures by eating and  
3 consuming Shrimp Paste and additionally by handling Shrimp Paste without wearing  
4 gloves or any other personal protective equipment, or by touching bare skin or mucous  
5 membranes with gloves after handling Shrimp Paste, as well as through direct and  
6 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate  
7 matter dispersed from Shrimp Paste.

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

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

17 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
18 \$2,500.00 per day per individual exposure to Lead and Cadmium from Shrimp Paste,  
19 pursuant to Health and Safety Code Section 25249.7(b).

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

22  
23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each of the Defendants as follows:

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

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

27 40. Costs of suit;

28 41. Reasonable attorney fees and costs; and

1 42. Any further relief that the court may deem just and equitable.  
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3 Dated: November 29, 2023

YEROUSHALMI & YEROUSHALMI\*

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5  
6 /s/ Reuben Yeroushalmi

Reuben Yeroushalmi

Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.  
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