

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroshalmi.com

3 **YEROUSHALMI & YEROUSHALMI***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

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David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

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

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 NOWHERE HOLDCO, LLC DBA
17 EREWHON MARKET, a Delaware Limited
18 Liability Company;
19 NOWHERE PARTNERS, LLC DBA
20 EREWHON ORGANIC GROCER AND
21 CAFÉ, a California Limited Liability
22 Company;
23 and DOES 1-20,

24 Defendants.

CASE NO. **25STCV02758**

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)

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
26 against defendants NOWHERE HOLDCO, LLC DBA EREWHON MARKET, NOWHERE
27 PARTNERS, LLC DBA EREWHON ORGANIC GROCER AND CAFÉ, and DOES 1-20 as
28 follows:

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 NOWHERE HOLDCO, LLC DBA EREWHON MARKET (“NOWHERE HOLDCO”) 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 NOWHERE PARTNERS, LLC DBA EREWHON ORGANIC GROCER AND CAFÉ (“NOWHERE PARTNERS”) is a California Limited Liability Company 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 1-20, 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.
5. At all times mentioned herein, the term “Defendants” includes NOWHERE HOLDCO, NOWHERE PARTNERS, and DOES 1-20.
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 1-20, was an agent, servant, or employee of each of the other Defendants. Furthermore, NOWHERE PARTNERS lists NOWHERE HOLDCO as the listed Manager or Member Name on its California Secretary of State listing. 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 the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

JURISDICTION

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

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 12. 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 13. 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 14. 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 15. 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).

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

16. Plaintiff identified certain practices of manufacturers and distributors of Seaweed Snacks of exposing, knowingly and intentionally, persons in California to Lead and Lead Compounds, Cadmium and Cadmium Compounds, of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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

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

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 June 6, 2023, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to NOWHERE HOLDCO, NOWHERE PARTNERS, 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 Seaweed Snack I.
- b. On or about June 6, 2023, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to NOWHERE HOLDCO, NOWHERE PARTNERS, 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 Seaweed Snack II.

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

1 there was a reasonable and meritorious case for this private action. The attorney for
2 Plaintiff attached to the Certificate of Merit served on the Attorney General the
3 confidential factual information sufficient to establish the basis of the Certificate of
4 Merit.

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

8 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notice of the alleged violations to NOWHERE HOLDCO, NOWHERE
10 PARTNERS, and the public prosecutors referenced in Paragraph 20.

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

14 **FIRST CAUSE OF ACTION**

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

18 **Seaweed I**

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

21 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Seaweed Snack ("Seaweed Snack I"), including but
23 not limited to: "SeaSnax"; "Strangely Addictive"; "Organic Seaweed"; "Olive Oil & Sea
24 Salt"; "Net Wt. 10 g (0.36 oz)"; "04.12.2023"; "Manufactured for: SeaSnax"; "Product
25 of Korea"; "SS-BGO-CLASS"; "UPC 811201020014".

26 28. Seaweed Snack I contains Lead and Cadmium.
27
28

1 29. Defendants knew or should have known that the State of California has identified Lead
2 as a chemical known to cause cancer, reproductive toxicity, and developmental toxicity
3 and Cadmium as a chemical known to cause reproductive toxicity and developmental
4 toxicity, and therefore was subject to Proposition 65 warning requirements. Defendants
5 were also informed of the presence of Lead and Cadmium in Seaweed Snack I within
6 Plaintiff's notice of alleged violations further discussed above at Paragraph 20a.

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

14 31. Plaintiff is informed, believes, and thereon alleges that between June 6, 2020 and the
15 present, each of the Defendants knowingly and intentionally exposed California
16 consumers and users of Seaweed Snack I, which Defendants manufactured, distributed,
17 or sold as mentioned above, to Lead and Cadmium, without first providing any type of
18 clear and reasonable warning of such to the exposed persons before the time of exposure.
19 Defendants have distributed and sold Seaweed Snack I in California. Defendants know
20 and intend that California consumers will use and consume Seaweed Snack I, thereby
21 exposing them to Lead and Cadmium. Further, Plaintiff is informed, believes, and
22 thereon alleges that Defendants are selling Seaweed Snack I under a brand or trademark
23 that is owned or licensed by the Defendants or an entity affiliated thereto; have
24 knowingly introduced Lead and Cadmium into Seaweed Snack I or knowingly caused
25 Lead and Cadmium to be created in Seaweed Snack I; have covered, obscured or altered
26 a warning label that has been affixed to Seaweed Snack I by the manufacturer, producer,
27 packager, importer, supplier or distributor of Seaweed Snack I; have received a notice
28

1 and warning materials for exposure from Seaweed Snack I without conspicuously
2 posting or displaying the warning materials; and/or have actual knowledge of potential
3 exposure to Lead and Cadmium from Seaweed Snack I. Defendants thereby violated
4 Proposition 65.

5 32. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
6 Persons sustain exposures by eating and consuming Seaweed Snack I.

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

14 34. 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 35. 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 Seaweed Snack I,
19 pursuant to Health and Safety Code Section 25249.7(b).

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

22 **SECOND CAUSE OF ACTION**

23 **(By CONSUMER ADVOCACY GROUP, INC. and against NOWHERE**
24 **HOLDCO, NOWHERE PARTNERS, and DOES 11-20 for Violations of**
25 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
(Health & Safety Code, §§ 25249.5, et seq.)

26 **Seaweed II**

1 37. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 of this complaint
2 as though fully set forth herein.

3 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Seaweed Snack (“Seaweed Snack II”), including but
5 not limited to: “SeaSnax”; “Strangely Addictive”; “Organic Seaweed”; “Wasabi”; “Net
6 Wt. 10 g (0.36 oz)”; “05.09.2023”; “Manufactured for: SeaSnax”; “Product of Korea”;
7 “SS-BGO-WASABI”; “UPC 811201020045”.

8 39. Seaweed Snack II contains Cadmium.

9 40. Defendants knew or should have known that Cadmium has been identified by the State
10 of California as a chemical known to cause reproductive toxicity and developmental
11 toxicity, and therefore was subject to Proposition 65 warning requirements. Defendants
12 were also informed of the presence of Cadmium in Seaweed Snack II within Plaintiff’s
13 notice of alleged violations further discussed above at Paragraph 20b.

14 41. Plaintiff’s allegations regarding Seaweed Snack II concerns “[c]onsumer products
15 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
16 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
17 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
18 25602(b). Seaweed Snack II is a consumer product, and, as mentioned herein, exposures
19 to Cadmium took place as a result of such normal and foreseeable consumption and use.

20 42. Plaintiff is informed, believes, and thereon alleges that between June 6, 2020 and the
21 present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Seaweed Snack II, which Defendants manufactured, distributed,
23 or sold as mentioned above, to Cadmium, without first providing any type of clear and
24 reasonable warning of such to the exposed persons before the time of exposure.

25 Defendants have distributed and sold Seaweed Snack II in California. Defendants know
26 and intend that California consumers will use and consume Seaweed Snack II, thereby
27 exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges

1 that Defendants are selling Seaweed Snack II under a brand or trademark that is owned
2 or licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
3 Cadmium into Seaweed Snack II or knowingly caused Cadmium to be created in
4 Seaweed Snack II; have covered, obscured or altered a warning label that has been
5 affixed to Seaweed Snack II by the manufacturer, producer, packager, importer, supplier
6 or distributor of Seaweed Snack II; have received a notice and warning materials for
7 exposure from Seaweed Snack II without conspicuously posting or displaying the
8 warning materials; and/or have actual knowledge of potential exposure to Cadmium
9 from Seaweed Snack II. Defendants thereby violated Proposition 65.

10 43. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
11 Persons sustain exposures by eating and consuming Seaweed Snack II.

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

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

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

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

27 **PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

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

Dated: January 31, 2025

YEROUSHALMI & YEROUSHALMI*

/s/ Reuben Yeroushalmi
Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.