

1 Reuben Yeroushalmi (SBN 193981)
reuben@yerausalmi.com
2 Tara Heckard-Bryant (SBN 212534)
 tara@yerausalmi.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
9 Attorneys for Plaintiff,
10 CONSUMER ADVOCACY GROUP, INC.

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 WISMETTAC ASIAN FOODS, INC., a
17 California Corporation;
18 and DOES 1-10,

19 Defendants.

CASE NO. **24STCV13964**

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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23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
24 defendants WISMETTAC ASIAN FOODS, INC., and DOES 1-10 as follows:

25 **THE PARTIES**

- 26
27 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
28 organization qualified to do business in the State of California. CAG is a person within

1 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
2 as a private attorney general, brings this action in the public interest as defined under
3 Health and Safety Code Section 25249.7, subdivision (d).

4 2. Defendant WISMETTAC ASIAN FOODS, INC. (“WISMETTAC”) is a California
5 Corporation qualified to do business in California, and doing business in the State of
6 California at all relevant times herein.

7 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
8 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
9 Complaint to allege their true names and capacities when ascertained. Plaintiff is
10 informed, believes, and thereon alleges that each fictitiously named defendant is
11 responsible in some manner for the occurrences herein alleged and the damages caused
12 thereby.

13 4. At all times mentioned herein, the term “Defendants” includes WISMETTAC, and
14 DOES 1-10.

15 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
16 times mentioned herein have conducted business within the State of California.

17 6. Upon information and belief, at all times relevant to this action, each of the Defendants,
18 including DOES 1-10, was an agent, servant, or employee of each of the other
19 Defendants. In conducting the activities alleged in this Complaint, each of the
20 Defendants was acting within the course and scope of this agency, service, or
21 employment, and was acting with the consent, permission, and authorization of each of
22 the other Defendants. All actions of each of the Defendants alleged in this Complaint
23 were ratified and approved by every other Defendant or their officers or managing
24 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
25 alleged wrongful conduct of each of the other Defendants.

26 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
27 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
28

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 Seaweed
22 of exposing, knowingly and intentionally, persons in California to Lead and Lead
23 Compounds and Cadmium and Cadmium Compounds of such products without first
24 providing clear and reasonable warnings of such to the exposed persons prior to the time
25 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

26 16. On October 1, 1992 the Governor of California added Lead and Lead Compounds
27 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.

28

1 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
2 twenty (20) months after addition of Lead to the list of chemicals known to the State to
3 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
4 discharge prohibitions.

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

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

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

25 **SATISFACTION OF PRIOR NOTICE**

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

1 a. On or about June 13, 2023, Plaintiff gave notice of alleged violations of Health
2 and Safety Code Section 25249.6, concerning consumer products exposures
3 subject to a private action to WISMETTAC, and to the California Attorney
4 General, County District Attorneys, and City Attorneys for each city containing
5 a population of at least 750,000 people in whose jurisdictions the violations
6 allegedly occurred, concerning the Dried Seaweed.

7 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
8 products involved, the likelihood that such products would cause users to suffer
9 significant exposures to Dried Seaweed, and the corporate structure of each of the
10 Defendants.

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

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

23 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
24 gave notice of the alleged violations to WISMETTAC, and the public prosecutors
25 referenced in Paragraph 20.
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1 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
2 any applicable district attorney or city attorney has commenced and is diligently
3 prosecuting an action against the Defendants.

4 **FIRST CAUSE OF ACTION**

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

8 **Seaweed**

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

11 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Dried Seaweed (“Dried Seaweed”), including but not
13 limited to “Dried Seaweed”; “Kaiso Ryori Mehijiki Fujicco Br.”; “Product of South
14 Korea”; “Distributed by Wismettac Asian Foods, Inc.”; “Net Wt. 0.7 oz (20 g)”; “Best
15 Before: 2022.11”; “UPC 074410495077”

16 28. Dried Seaweed contains Lead and Cadmium.

17 29. Defendants knew or should have known that Lead and Cadmium have been identified by
18 the State of California as chemicals known to cause cancer and reproductive toxicity, and
19 therefore was subject to Proposition 65 warning requirements. Defendants were also
20 informed of the presence of Lead and Cadmium in Dried Seaweed within Plaintiff’s
21 notice of alleged violations further discussed above at Paragraph 20a.

22 30. Plaintiff’s allegations regarding Dried Seaweed concerns “[c]onsumer products
23 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
24 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
25 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
26 *25602(b)*. Dried Seaweed are consumer products, and, as mentioned herein, exposures
27 to Lead and Cadmium took place as a result of such normal and foreseeable consumption
28 and use.

- 1 31. Plaintiff is informed, believes, and thereon alleges that between June 13, 2020 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Dried Seaweed, which Defendants manufactured, distributed, or
4 sold as mentioned above, to Lead and Cadmium, without first providing any type of clear
5 and reasonable warning of such to the exposed persons before the time of exposure.
6 Defendants have distributed and sold Dried Seaweed in California. Defendants know
7 and intend that California consumers will use and consume Dried Seaweed, thereby
8 exposing them to Lead and Cadmium. Further, Plaintiff is informed, believes, and
9 thereon alleges that Defendants are selling Dried Seaweed under a brand or trademark
10 that is owned or licensed by the Defendants or an entity affiliated thereto; have
11 knowingly introduced Lead and Cadmium into Dried Seaweed or knowingly caused
12 Lead and Cadmium to be created in Dried Seaweed; have covered, obscured or altered a
13 warning label that has been affixed to Dried Seaweed by the manufacturer, producer,
14 packager, importer, supplier or distributor of Dried Seaweed; have received a notice and
15 warning materials for exposure from Dried Seaweed without conspicuously posting or
16 displaying the warning materials; and/or have actual knowledge of potential exposure to
17 Lead and Cadmium from Dried Seaweed. Defendants thereby violated Proposition 65.
- 18 32. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
19 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
20 and consuming Dried Seaweed, and additionally by handling Dried Seaweed without
21 wearing gloves or any other personal protective equipment, or by touching bare skin or
22 mucous membranes with gloves after handling Dried Seaweed, as well as through direct
23 and indirect hand to mouth contact, hand to mucous membrane, or even breathing in
24 particulate matter dispersed from Dried Seaweed.
- 25 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to Dried Seaweed have been ongoing and continuous, as Defendants
27 engaged and continue to engage in conduct which violates Health and Safety Code
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1 Section 25249.6, including the manufacture, distribution, promotion, and sale of Dried
2 Seaweed, so that a separate and distinct violation of Proposition 65 occurred each and
3 every time a person was exposed to Lead and Cadmium by Dried Seaweed as mentioned
4 herein.

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

8 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to Lead and Cadmium from Dried Seaweed,
10 pursuant to Health and Safety Code Section 25249.7(b).

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

13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

20
21 Dated: June 4, 2024

YEROUSHALMI & YEROUSHALMI*

22
23 */s/ Reuben Yeroushalmi*

24 _____
25 Reuben Yeroushalmi
26 Attorneys for Plaintiff,
27 CONSUMER ADVOCACY GROUP, INC.
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