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6 CONSUMER ADVOCACY GROUP, INC.

FILED
Superior Court of California
County of Los Angeles
06/28/2024

David W. Slayton, Executive Officer / Clerk of Court
By: A. Flores Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

9
10 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

11 Plaintiff,

12 v.

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

16 Defendants.

CASE NO. 23STCV08454

FIRST AMENDED 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)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges five causes of action
2 against defendants ROLAND FOODS, LLC, WALMART INC., and DOES 1-10 as follows:

3 **THE PARTIES**

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

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

11 **JURISDICTION**

12 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
13 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
14 those given by statute to other trial courts. This Court has jurisdiction over this action
15 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
16 violations of Proposition 65 in any Court of competent jurisdiction.

17 10. This Court has jurisdiction over Defendants named herein because Defendants either
18 reside or are located in this State or are foreign corporations authorized to do business in
19 California, are registered with the California Secretary of State, or who do sufficient
20 business in California, have sufficient minimum contacts with California, or otherwise
21 intentionally avail themselves of the markets within California through their
22 manufacture, distribution, promotion, marketing, or sale of their products within
23 California to render the exercise of jurisdiction by the California courts permissible
24 under traditional notions of fair play and substantial justice.

25 11. Venue is proper in the County of Los Angeles because one or more of the instances of
26 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
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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).

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

3 16. Plaintiff identified certain practices of manufacturers and distributors of Escargots and
4 Mushrooms of exposing, knowingly and intentionally, persons in California to Lead and
5 Lead Compounds, and/or Cadmium and Cadmium Compounds of such products without
6 first providing clear and reasonable warnings of such to the exposed persons prior to the
7 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

8 17. On October 1, 1992 the Governor of California added Lead and Lead Compounds
9 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
10 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
11 twenty (20) months after addition of Lead to the list of chemicals known to the State to
12 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
13 discharge prohibitions.

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

21 19. On October 1, 1987 the Governor of California added Cadmium and Cadmium
22 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
23 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
24 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
25 chemicals known to the State to cause cancer, Cadmium became fully subject to
26 Proposition 65 warning requirements and discharge prohibitions.

1 20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
2 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
3 tit. 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
4 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
5 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
6 to the State to cause developmental and reproductive toxicity, Cadmium became fully
7 subject to Proposition 65 warning requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

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

- 11 a. On or about December 22, 2022, Plaintiff gave notice of alleged violations of
12 Health and Safety Code Section 25249.6, concerning consumer products
13 exposures subject to a private action to ROLAND, WALMART, and to the
14 California Attorney General, County District Attorneys, and City Attorneys for
15 each city containing a population of at least 750,000 people in whose
16 jurisdictions the violations allegedly occurred, concerning the Escargots.
- 17 b. On or about September 20, 2022, Plaintiff gave notice of alleged violations of
18 Health and Safety Code Section 25249.6, concerning consumer products
19 exposures subject to a private action to ROLAND, and to the California
20 Attorney General, County District Attorneys, and City Attorneys for each city
21 containing a population of at least 750,000 people in whose jurisdictions the
22 violations allegedly occurred, concerning the Mushrooms.
- 23 c. On or about July 28, 2023, Plaintiff gave notice of alleged violations of Health
24 and Safety Code Section 25249.6, concerning consumer products exposures
25 subject to a private action to ROLAND, and to the California Attorney General,
26 County District Attorneys, and City Attorneys for each city containing a
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1 population of at least 750,000 people in whose jurisdictions the violations
2 allegedly occurred, concerning the Mushrooms.

3 d. On or about October 26, 2023, Plaintiff gave notice of alleged violations of
4 Health and Safety Code Section 25249.6, concerning consumer products
5 exposures subject to a private action to ROLAND, and to the California
6 Attorney General, County District Attorneys, and City Attorneys for each city
7 containing a population of at least 750,000 people in whose jurisdictions the
8 violations allegedly occurred, concerning the Escargots.

9 e. On or about December 1, 2023, Plaintiff gave notice of alleged violations of
10 Health and Safety Code Section 25249.6, concerning consumer products
11 exposures subject to a private action to ROLAND, and to the California
12 Attorney General, County District Attorneys, and City Attorneys for each city
13 containing a population of at least 750,000 people in whose jurisdictions the
14 violations allegedly occurred, concerning the Escargots.

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 ROLAND, WALMART, and the public
8 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 ROLAND,**
14 **WALMART, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking**
15 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et***
16 ***seq.*))**

17 **Snail Products**

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 Escargots ("Escargots"), including but not limited or
22 identified as: "Roland"; "Escargots"; "Giant Snails"; "Net Wt. 7.76 oz. (220g)"; "Dr.
23 Wt. 4.4 oz. (125g)"; "1 Dozen"; "RLKDG"; "RLNK"; "V0215"; "UPC 0 41224 26014
24 6".

25 29. Escargots contains Lead and Cadmium.

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

1 Defendants were also informed of the presence of Lead and Cadmium in Escargots
2 within Plaintiff's notice of alleged violations further discussed above at Paragraph 21a.
3 31. Plaintiff's allegations regarding Escargots concerns "[c]onsumer products exposure[s],"
4 which "is an exposure that results from a person's acquisition, purchase, storage,
5 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
6 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
7 Escargots are consumer products, and, as mentioned herein, exposures to Lead and
8 Cadmium took place as a result of such normal and foreseeable consumption and use.
9 32. Plaintiff is informed, believes, and thereon alleges that between December 22, 2019 and
10 the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Escargots, which Defendants manufactured, distributed, or sold
12 as mentioned above, to Lead and 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 Escargots in California. Defendants know and
15 intend that California consumers will use and consume Escargots, thereby exposing them
16 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
17 Defendants are selling Escargots under a brand or trademark that is owned or licensed by
18 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
19 Cadmium into Escargots or knowingly caused Lead and Cadmium to be created in
20 Escargots; have covered, obscured or altered a warning label that has been affixed to
21 Escargots by the manufacturer, producer, packager, importer, supplier or distributor of
22 Escargots; have received a notice and warning materials for exposure from Escargots
23 without conspicuously posting or displaying the warning materials; and/or have actual
24 knowledge of potential exposure to Lead and Cadmium from Escargots. Defendants
25 thereby violated Proposition 65.
26 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.
27 Persons sustain exposures by handling Escargots 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 Escargots, as well as through direct and indirect hand to mouth
3 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
4 Escargots.

5 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to Escargots 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
9 Escargots, so that a separate and distinct violation of Proposition 65 occurred each and
10 every time a person was exposed to Lead and Cadmium by Escargots as mentioned
11 herein.

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

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

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

20 **SECOND CAUSE OF ACTION**

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

24 **Mushrooms**

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

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

1 limited or identified as: "Roland ®"; "Premium Mushrooms"; "Dried Mixed Wild
2 Mushrooms"; "Net Wt. 1.41 oz (40 g)"; "UPC 0 41224 44850 6."

3 40. Mushrooms contains Lead.

4 41. Defendants knew or should have known that Lead has been identified by the State of
5 California as a chemical known to cause cancer, developmental and reproductive toxicity
6 and therefore was subject to Proposition 65 warning requirements. Defendants were also
7 informed of the presence of Lead in Mushrooms within Plaintiff's notice of alleged
8 violations further discussed above at Paragraph 21b.

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

15 43. Plaintiff is informed, believes, and thereon alleges that between September 20, 2019, and
16 the present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Escargots, which Defendants manufactured, distributed, or sold
18 as mentioned above, to Lead, without first providing any type of clear and reasonable
19 warning of such to the exposed persons before the time of exposure. Defendants have
20 distributed and sold Mushrooms in California. Defendants know and intend that
21 California consumers will use and consume Mushrooms, thereby exposing them to Lead.
22 Further, Plaintiff is informed, believes, and thereon alleges that Defendants are selling
23 Escargots under a brand or trademark that is owned or licensed by the Defendants or an
24 entity affiliated thereto; have knowingly introduced Lead into Mushrooms or knowingly
25 caused Lead to be created in Mushrooms; have covered, obscured or altered a warning
26 label that has been affixed to Mushrooms by the manufacturer, producer, packager,
27 importer, supplier or distributor of Mushrooms; have received a notice and warning
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1 materials for exposure from Mushrooms without conspicuously posting or displaying the
2 warning materials; and/or have actual knowledge of potential exposure to Lead from
3 Mushrooms. Defendants thereby violated Proposition 65.

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

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

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

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

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

25 **THIRD CAUSE OF ACTION**

26 **(By CONSUMER ADVOCACY GROUP, INC. and against ROLAND, and DOES**
27 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
28 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

Mushrooms

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2 49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 of this complaint
3 as though fully set forth herein.

4 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
5 distributor, promoter, or retailer of Mushrooms (“Mushrooms II”), including but not
6 limited or identified as: “Roland”; “Premium Mushrooms”; “Dried Mixed Wild
7 Mushrooms”; “Net Wt. 1.41 oz (40g)”; “Packed Exclusively for Roland Foods, LLC”;
8 “USA01”; “320”; “UPC 041224448506.”

9 51. Mushrooms II contain Lead.

10 52. Defendants knew or should have known that Lead has been identified by the State of
11 California as a chemical known to cause cancer, developmental and reproductive toxicity
12 and therefore was subject to Proposition 65 warning requirements. Defendants were also
13 informed of the presence of Lead in Mushrooms II within Plaintiff’s notice of alleged
14 violations further discussed above at Paragraph 21c.

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

21 54. Plaintiff is informed, believes, and thereon alleges that between July 28, 2020, and the
22 present, each of the Defendants knowingly and intentionally exposed California
23 consumers and users of Mushrooms II, which Defendants manufactured, distributed, or
24 sold as mentioned above, to Lead, without first providing any type of clear and
25 reasonable warning of such to the exposed persons before the time of exposure.
26 Defendants have distributed and sold Mushrooms II in California. Defendants know and
27 intend that California consumers will use and consume Mushrooms II, thereby exposing
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1 them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
2 Defendants are selling Mushrooms II under a brand or trademark that is owned or
3 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
4 Lead into Mushrooms II or knowingly caused Lead to be created in Mushrooms II; have
5 covered, obscured or altered a warning label that has been affixed to Mushrooms II by
6 the manufacturer, producer, packager, importer, supplier or distributor of Mushrooms II;
7 have received a notice and warning materials for exposure from Mushrooms II without
8 conspicuously posting or displaying the warning materials; and/or have actual
9 knowledge of potential exposure to Lead from Mushrooms II. Defendants thereby
10 violated Proposition 65.

11 55. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
12 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
13 and consuming Mushrooms II, and additionally by handling Mushrooms II without
14 wearing gloves or any other personal protective equipment, or by touching bare skin or
15 mucous membranes with gloves after handling Mushrooms II, as well as through direct
16 and indirect hand to mouth contact, hand to mucous membrane, or even breathing in
17 particulate matter dispersed from Mushrooms II.

18 56. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to Mushrooms II have been ongoing and continuous, as Defendants
20 engaged and continue to engage in conduct which violates Health and Safety Code
21 Section 25249.6, including the manufacture, distribution, promotion, and sale of
22 Mushrooms II, so that a separate and distinct violation of Proposition 65 occurred each
23 and every time a person was exposed to Lead by Mushrooms II as mentioned herein.

24 57. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
25 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
26 violations alleged herein will continue to occur into the future.

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1 58. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Lead from Mushrooms II, pursuant to
3 Health and Safety Code Section 25249.7(b).

4 59. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

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7 **FOURTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against ROLAND, and DOES**
9 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
10 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

11 **Snail Products**

12 60. Plaintiff repeats and incorporates by reference paragraphs 1 through 59 of this complaint
13 as though fully set forth herein.

14 61. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Escargots (“Escargots II”), including but not limited
16 or identified as: “Roland”; “Escargots”; “Extra Large”; “Extra Large”; “Achatina
17 Snails”; “ACHATINA FULICA”; Net Wt. 28.2 oz. (1 lb. 12.2 oz.) 800g”; “Dr. Wt. 17.6
18 oz. (1 lb. 1.6 oz.) 500g”; “USA01”; “320”; “UPC 0 41224 26218 8.”

19 62. Escargots II contains Cadmium.

20 63. Defendants knew or should have known that Cadmium has been identified by the State
21 of California as a chemical known to cause cancer, developmental and reproductive
22 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
23 were also informed of the presence of Cadmium in Escargots II within Plaintiff’s notice
24 of alleged violations further discussed above at Paragraph 21d.

25 64. Plaintiff’s allegations regarding Escargots II concerns “[c]onsumer products
26 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
27 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
28 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*

1 25602(b). Escargots II are consumer products, and, as mentioned herein, exposures to
2 Cadmium took place as a result of such normal and foreseeable consumption and use.
3 65. Plaintiff is informed, believes, and thereon alleges that between October 26, 2020, and
4 the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Escargots II, which Defendants manufactured, distributed, or
6 sold as mentioned above, to Cadmium, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold Escargots II in California. Defendants know and
9 intend that California consumers will use and consume Escargots, thereby exposing them
10 to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that Defendants
11 are selling Escargots II under a brand or trademark that is owned or licensed by the
12 Defendants or an entity affiliated thereto; have knowingly introduced Cadmium into
13 Escargots II or knowingly caused Cadmium to be created in Escargots II; have covered,
14 obscured or altered a warning label that has been affixed to Escargots II by the
15 manufacturer, producer, packager, importer, supplier or distributor of Escargots II; have
16 received a notice and warning materials for exposure from Escargots II without
17 conspicuously posting or displaying the warning materials; and/or have actual
18 knowledge of potential exposure to Cadmium from Escargots II. Defendants thereby
19 violated Proposition 65.
20 66. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
21 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
22 and consuming Escargots II, and additionally by handling Escargots II without wearing
23 gloves or any other personal protective equipment, or by touching bare skin or mucous
24 membranes with gloves after handling Escargots II, as well as through direct and indirect
25 hand to mouth contact, hand to mucous membrane, or even breathing in particulate
26 matter dispersed from Escargots II.

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

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

10 69. Based on the allegations herein, Defendants are liable for civil penalties of up to
11 \$2,500.00 per day per individual exposure to Cadmium from Escargots II, pursuant to
12 Health and Safety Code Section 25249.7(b).

13 70. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
14 filing this Complaint.

15 **FIFTH CAUSE OF ACTION**

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

19 **Snail Products**

20 71. Plaintiff repeats and incorporates by reference paragraphs 1 through 70 of this complaint
21 as though fully set forth herein.

22 72. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Escargots ("Escargots III"), including but not limited
24 to: "Roland"; "Escargots"; "Giant Snails"; Net Wt. 7.76 oz. (220g)"; "Dr. Wt. 4.4 oz.
25 (125g)"; "1 Dozen"; "USA01"; "767"; "UPC 041224260146."

26 73. Escargots III contains Lead.

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

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

4 75. Plaintiff's allegations regarding Escargots III 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)*. Escargots III are consumer products, and, as mentioned herein, exposures to
9 Lead took place as a result of such normal and foreseeable consumption and use.

10 76. Plaintiff is informed, believes, and thereon alleges that between December 1, 2020, and
11 the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Escargots III, which Defendants manufactured, distributed, or
13 sold as mentioned above, to Lead, without first providing any type of clear and
14 reasonable warning of such to the exposed persons before the time of exposure.
15 Defendants have distributed and sold Escargots III in California. Defendants know and
16 intend that California consumers will use and consume Escargots III, thereby exposing
17 them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that
18 Defendants are selling Escargots III under a brand or trademark that is owned or licensed
19 by the Defendants or an entity affiliated thereto; have knowingly introduced Lead into
20 Escargots III or knowingly caused Lead to be created in Escargots III; have covered,
21 obscured or altered a warning label that has been affixed to Escargots III by the
22 manufacturer, producer, packager, importer, supplier or distributor of Escargots III; have
23 received a notice and warning materials for exposure from Escargots III without
24 conspicuously posting or displaying the warning materials; and/or have actual
25 knowledge of potential exposure to Lead by Escargots III. Defendants thereby violated
26 Proposition 65.

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

8 78. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
9 Proposition 65 as to Escargots III 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
12 Escargots, so that a separate and distinct violation of Proposition 65 occurred each and
13 every time a person was exposed to Lead by Escargots III as mentioned herein.

14 79. 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 80. 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 from Escargots III, pursuant to Health
19 and Safety Code Section 25249.7(b).

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

22 **PRAYER FOR RELIEF**

23 Plaintiff demands against each of the Defendants as follows:

24 82. A permanent injunction mandating Proposition 65-compliant warnings;

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

26 84. Costs of suit;

27 85. Reasonable attorney fees and costs; and

28 86. Any further relief that the court may deem just and equitable.

1 Dated: June 28, 2024

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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