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8  
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10 CONSUMER ADVOCACY GROUP, INC.

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14  
15 **COUNTY OF LOS ANGELES**  
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17 CONSUMER ADVOCACY GROUP, INC.,  
18 in the public interest,

19 Plaintiff,

20 v.

21 BRISTOL FARMS, a California  
22 Corporation;  
23 and DOES 1-20,

24 Defendants.

CASE NO. **24STCV21138**

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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26  
27 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
28 against defendants BRISTOL FARMS, and DOES 1-20 as 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 BRISTOL FARMS (“BRISTOL”) is a California Corporation qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. 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.
4. At all times mentioned herein, the term “Defendants” includes BRISTOL, and DOES 1-20.
5. 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.
6. 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. 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

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the  
2 alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

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

- 21 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
23 because Defendants conducted, and continue to conduct, business in the County of Los  
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

- 26 11. In 1986, California voters approved an initiative to address growing concerns about  
27 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
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1 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
4 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
5 from contamination, to allow consumers to make informed choices about the products  
6 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
7 fit.

8 12. Proposition 65 requires the Governor of California to publish a list of chemicals known  
9 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
10 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
11 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
12 other controls that apply to Proposition 65-listed chemicals.

13 13. All businesses with ten (10) or more employees that operate or sell products in California  
14 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
15 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
16 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
17 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
18 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

19 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
21 25249.7. "Threaten to violate" means "to create a condition in which there is a  
22 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
23 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
24 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 15. Plaintiff identified certain practices of manufacturers and distributors of Seaweed Chips  
26 of exposing, knowingly and intentionally, persons in California to Cadmium and  
27 Cadmium Compounds, of such products without first providing clear and reasonable  
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1 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later  
2 discerned that Defendants engaged in such practice.

3 16. On October 1, 1987 the Governor of California added Cadmium and Cadmium  
4 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer  
5 (*Cal. Code Regs. tit. 27, § 27001(b)*). Pursuant to Health and Safety Code Sections  
6 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of  
7 chemicals known to the State to cause cancer, Cadmium became fully subject to  
8 Proposition 65 warning requirements and discharge prohibitions.

9 17. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals  
10 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*  
11 *tit. 27, § 27001(c)*). Cadmium is known to the State to cause developmental, and male  
12 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
13 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known  
14 to the State to cause developmental and reproductive toxicity, Cadmium became fully  
15 subject to Proposition 65 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

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

- 19 a. On or about February 29, 2024, Plaintiff gave notice of alleged violations of  
20 Health and Safety Code Section 25249.6, concerning consumer products  
21 exposures subject to a private action to BRISTOL, and to the California  
22 Attorney General, County District Attorneys, and City Attorneys for each city  
23 containing a population of at least 750,000 people in whose jurisdictions the  
24 violations allegedly occurred, concerning the Seaweed Chips I.
- 25 b. On or about April 1, 2024, Plaintiff gave notice of alleged violations of Health  
26 and Safety Code Section 25249.6, concerning consumer products exposures  
27 subject to a private action to BRISTOL, and to the California Attorney General,

1 County District Attorneys, and City Attorneys for each city containing a  
2 population of at least 750,000 people in whose jurisdictions the violations  
3 allegedly occurred, concerning the Seaweed Chips I.

4 c. On or about February 29, 2024, Plaintiff gave notice of alleged violations of  
5 Health and Safety Code Section 25249.6, concerning consumer products  
6 exposures subject to a private action to BRISTOL, and to the California  
7 Attorney General, County District Attorneys, and City Attorneys for each city  
8 containing a population of at least 750,000 people in whose jurisdictions the  
9 violations allegedly occurred, concerning the Seaweed Chips II.

10 d. On or about April 1, 2024, Plaintiff gave notice of alleged violations of Health  
11 and Safety Code Section 25249.6, concerning consumer products exposures  
12 subject to a private action to BRISTOL, and to the California Attorney General,  
13 County District Attorneys, and City Attorneys for each city containing a  
14 population of at least 750,000 people in whose jurisdictions the violations  
15 allegedly occurred, concerning the Seaweed Chips II.

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

19 20. 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 Cadmium, the  
23 subject Proposition 65-listed chemical of this action. Based on that information, the  
24 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
25 reasonable and meritorious case for this private action. The attorney for Plaintiff  
26 attached to the Certificate of Merit served on the Attorney General the confidential  
27 factual information sufficient to establish the basis of the Certificate of Merit.

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

4 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
5 gave notice of the alleged violations to BRISTOL, and the public prosecutors referenced  
6 in Paragraph 18.

7 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
8 any applicable district attorney or city attorney has commenced and is diligently  
9 prosecuting an action against the Defendants.

10 **FIRST CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against BRISTOL, and DOES**  
12 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
13 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

14 **Seaweed I**

15 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this complaint  
16 as though fully set forth herein.

17 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
18 distributor, promoter, or retailer of **Seaweed Chips I**, including but not limited to  
19 "SeaSnax"; "CHOMPERZ"; "CRUNCHY SEAWEEED CHIPS"; "Original"; "Naturally  
20 Delicious!"; "1 oz (30g)"; "Manufactured for: SeaSnax"; "Product of Korea"; "SCH-  
21 SNK-ORI"; "UPC 811201020205".

22 26. Seaweed Chips I contain Cadmium.

23 27. Defendants knew or should have known that Cadmium has been identified by the State  
24 of California as a chemical known to cause cancer, and Cadmium and therefore was  
25 subject to Proposition 65 warning requirements. Defendants were also informed of the  
26 presence of Cadmium in Seaweed Chips I within Plaintiff's notice of alleged violations  
27 further discussed above at Paragraph 18a and 18b.

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

7 29. Plaintiff is informed, believes, and thereon alleges that between February 29, 2021 and  
8 the present, each of the Defendants knowingly and intentionally exposed California  
9 consumers and users of Seaweed Chips I, which Defendants manufactured, distributed,  
10 or sold as mentioned above, to Cadmium, without first providing any type of clear and  
11 reasonable warning of such to the exposed persons before the time of exposure.

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

24 30. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.  
25 Persons sustain exposures by eating and consuming Seaweed Chips I.

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

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

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

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

#### 14 **SECOND CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against BRISTOL, and DOES**  
16 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
17 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

#### 18 **Seaweed II**

19 35. Plaintiff repeats and incorporates by reference paragraphs 1 through 34 of this complaint  
20 as though fully set forth herein.

21 36. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
22 distributor, promoter, or retailer of **Seaweed Chips II**, including but not limited to  
23 “SeaSnax”; “CHOMPERZ”; “CRUNCHY SEAWEED CHIPS”; “Onion”; “Naturally  
24 Delicious!”; “1 oz (30g)”; “Manufactured for: SeaSnax”; “Product of Korea”; “SCH-  
25 SNK-ONN”; “UPC 811201020212”.

26 37. Seaweed Chips II contain Cadmium.

27 38. Defendants knew or should have known that Cadmium has been identified by the State  
28 of California as a chemical known to cause cancer, and Cadmium and therefore was

1 subject to Proposition 65 warning requirements. Defendants were also informed of the  
2 presence of Cadmium in Seaweed Chips II within Plaintiff's notice of alleged violations  
3 further discussed above at Paragraph 18c and 18d.

4 39. Plaintiff's allegations regarding Seaweed Chips II 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)*. Seaweed Chips II are consumer products, and, as mentioned herein, exposures  
9 to Cadmium took place as a result of such normal and foreseeable consumption and use.

10 40. Plaintiff is informed, believes, and thereon alleges that between February 29, 2021 and  
11 the present, each of the Defendants knowingly and intentionally exposed California  
12 consumers and users of Seaweed Chips II, which Defendants manufactured, distributed,  
13 or sold as mentioned above, to Cadmium, 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 Seaweed Chips II in California. Defendants know  
16 and intend that California consumers will use and consume Seaweed Chips II, thereby  
17 exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges  
18 that Defendants are selling Seaweed Chips II under a brand or trademark that is owned  
19 or licensed by the Defendants or an entity affiliated thereto; have knowingly introduced  
20 Cadmium into Seaweed Chips II or knowingly caused Cadmium to be created in  
21 Seaweed Chips II; have covered, obscured or altered a warning label that has been  
22 affixed to Seaweed Chips II by the manufacturer, producer, packager, importer, supplier  
23 or distributor of Seaweed Chips II; have received a notice and warning materials for  
24 exposure from Seaweed Chips II without conspicuously posting or displaying the  
25 warning materials; and/or have actual knowledge of potential exposure to Cadmium  
26 from Seaweed Chips II. Defendants thereby violated Proposition 65.

- 1 41. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.  
2 Persons sustain exposures by eating and consuming Seaweed Chips II.
- 3 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Seaweed Chips II have been ongoing and continuous, as Defendants  
5 engaged and continue to engage in conduct which violates Health and Safety Code  
6 Section 25249.6, including the manufacture, distribution, promotion, and sale of  
7 Seaweed Chips II, so that a separate and distinct violation of Proposition 65 occurred  
8 each and every time a person was exposed to Cadmium by Seaweed Chips II as  
9 mentioned herein.
- 10 43. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.
- 13 44. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Cadmium from Seaweed Chips II, pursuant  
15 to Health and Safety Code Section 25249.7(b).
- 16 45. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
17 filing this Complaint.

18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

- 20 1. A permanent injunction mandating Proposition 65-compliant warnings;  
21 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);  
22 3. Costs of suit;  
23 4. Reasonable attorney fees and costs; and  
24 5. Any further relief that the court may deem just and equitable.  
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Dated: August 19, 2024

YEROUSHALMI & YEROUSHALMI\*

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