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10 CONSUMER ADVOCACY GROUP, INC.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

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

15 Plaintiff,

16 v.

17 NOWHERE PARTNERS, LLC DBA
18 EREWHON, a California Limited Liability
19 Company;
20 MOTHER'S MARKET & KITCHEN, INC.,
21 a Delaware Corporation;
22 and DOES 1-30,

23 Defendants.

24 CASE NO. **25STCV02489**

25 COMPLAINT FOR PENALTY AND
26 INJUNCTION

27 Violation of Proposition 65, the Safe
28 Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$35,000)

29 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges three causes of action
30 against defendants NOWHERE PARTNERS, LLC DBA EREWHON, MOTHER'S MARKET
31 & KITCHEN, INC., and DOES 1-30 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 NOWHERE PARTNERS, LLC DBA EREWHON (“EREWHON”) 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.
3. Defendant MOTHER’S MARKET & KITCHEN, INC. (“MOTHER’S MARKET”) is a Delaware Corporation 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 1-30, 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 EREWHON, MOTHER’S MARKET, and DOES 1-30.
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 1-30, 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

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing
3 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
4 alleged wrongful conduct of each of the other Defendants.

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

9 **JURISDICTION**

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

27 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

27 **SATISFACTION OF PRIOR NOTICE**

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

- 3 a. On or about May 13, 2024, Plaintiff gave notice of alleged violations of Health
4 and Safety Code Section 25249.6, concerning consumer products exposures
5 subject to a private action to EREWHON, and to the California Attorney
6 General, County District Attorneys, and City Attorneys for each city containing
7 a population of at least 750,000 people in whose jurisdictions the violations
8 allegedly occurred, concerning the Kale Chips I.
- 9 b. On or about May 13, 2024, Plaintiff gave notice of alleged violations of Health
10 and Safety Code Section 25249.6, concerning consumer products exposures
11 subject to a private action to EREWHON, and to the California Attorney
12 General, County District Attorneys, and City Attorneys for each city containing
13 a population of at least 750,000 people in whose jurisdictions the violations
14 allegedly occurred, concerning the Kale Chips I.
- 15 c. On or about June 6, 2024, Plaintiff gave notice of alleged violations of Health
16 and Safety Code Section 25249.6, concerning consumer products exposures
17 subject to a private action to EREWHON, and to the California Attorney
18 General, County District Attorneys, and City Attorneys for each city containing
19 a population of at least 750,000 people in whose jurisdictions the violations
20 allegedly occurred, concerning the Kale Chips I.
- 21 d. On or about June 6, 2024, Plaintiff gave notice of alleged violations of Health
22 and Safety Code Section 25249.6, concerning consumer products exposures
23 subject to a private action to EREWHON, and to the California Attorney
24 General, County District Attorneys, and City Attorneys for each city containing
25 a population of at least 750,000 people in whose jurisdictions the violations
26 allegedly occurred, concerning the Kale Chips I.

- 1 e. On or about October 4, 2024, Plaintiff gave notice of alleged violations of
2 Health and Safety Code Section 25249.6, concerning consumer products
3 exposures subject to a private action to MOTHER’S MARKET, and to the
4 California Attorney General, County District Attorneys, and City Attorneys for
5 each city containing a population of at least 750,000 people in whose
6 jurisdictions the violations allegedly occurred, concerning the Kale Chips II.
- 7 f. On or about October 11, 2024, Plaintiff gave notice of alleged violations of
8 Health and Safety Code Section 25249.6, concerning consumer products
9 exposures subject to a private action to MOTHER’S MARKET, and to the
10 California Attorney General, County District Attorneys, and City Attorneys for
11 each city containing a population of at least 750,000 people in whose
12 jurisdictions the violations allegedly occurred, concerning the Kale Chips III.

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

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

1 23. 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 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notice of the alleged violations to EREWHON, MOTHER'S MARKET, and the
6 public prosecutors referenced in Paragraph 20.

7 25. 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 EREWHON, and**
12 **DOES 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 **Chips I**

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

17 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Kale Chips ("Kale Chips I"), including but not
19 limited to:

- 20 i. "California Snax"; "Buffalo Wing"; "Spicy kale chips"; "LIVING FOODS";
21 "best if use by Dec 2024"; "3.8 Ounces 108 Grams"; "Calif Snax"; "UPC
22 013964200317" and
23 ii. "California Snax"; "Karma"; "LIVING FOODS"; "best if use by Oct 2024";
24 "KARMA KALE CHIPS"; "UPC 894579002578"; "Calif Snax".

25 28. Kale Chips I contains Cadmium.

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

1 were also informed of the presence of Cadmium in Kale Chips I within Plaintiff's notice
2 of alleged violations further discussed above at Paragraph 20a, 20b, 20c, and 20d.

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

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

26 32. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
27 Persons sustain exposures by eating and consuming Kale Chips I.

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1 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Kale Chips I 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 Kale
5 Chips I, so that a separate and distinct violation of Proposition 65 occurred each and
6 every time a person was exposed to Cadmium by Kale Chips I as mentioned herein.

7 34. 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 35. 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 Kale Chips I, pursuant to
12 Health and Safety Code Section 25249.7(b).

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

15 **SECOND CAUSE OF ACTION**

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

20 **Chips II**

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

23 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Kale Chips ("Kale Chips II"), identified as:

- 25 i. "California Snax"; "Natchos"; "cheesy flavor kale chips"; "LIVING
26 FOODS"; "best if use by Dec 2024"; "2.7 Ounces 77 Grams"; "UPC
27 850497002106"; "Calif Snax"; "NATCHOS KALE CHIPS" and
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1 ii. “California Snax”; “Pizza”; “Pizza flavored kale chips”; “LIVING FOODS”;
2 “best if use by June 2024”; “2.7 oz 77 Gm”; “UPC 837654893791”; “Calif
3 Snax”; “PIZZA KALE”.

4 39. Kale Chips II contain Lead and Cadmium.

5 40. Defendants knew or should have known that the State of California has identified Lead
6 as a chemical known to cause cancer, reproductive toxicity, and developmental toxicity
7 and Cadmium as a chemical known to cause reproductive toxicity and developmental
8 toxicity, and therefore was subject to Proposition 65 warning requirements. Defendants
9 were also informed of the presence of Lead and Cadmium in Kale Chips II within
10 Plaintiff’s notice of alleged violations further discussed above at Paragraph 20e.

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

18 42. Plaintiff is informed, believes, and thereon alleges that between October 4, 2021 and the
19 present, each of the Defendants knowingly and intentionally exposed California
20 consumers and users of Kale Chips II, which Defendants manufactured, distributed, or
21 sold as mentioned above, to Lead and Cadmium, without first providing any type of clear
22 and reasonable warning of such to the exposed persons before the time of exposure.
23 Defendants have distributed and sold Kale Chips II in California. Defendants know and
24 intend that California consumers will use and consume Kale Chips II, thereby exposing
25 them to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
26 that Defendants are selling Kale Chips II under a brand or trademark that is owned or
27 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
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1 Lead and Cadmium into Kale Chips II or knowingly caused Lead and Cadmium to be
2 created in Kale Chips II; have covered, obscured or altered a warning label that has been
3 affixed to Kale Chips II by the manufacturer, producer, packager, importer, supplier or
4 distributor of Kale Chips II; have received a notice and warning materials for exposure
5 from Kale Chips II without conspicuously posting or displaying the warning materials;
6 and/or have actual knowledge of potential exposure to Lead and Cadmium from Kale
7 Chips II. Defendants thereby violated Proposition 65.

8 43. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
9 Persons sustain exposures by eating and consuming Kale Chips II.

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

17 45. 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 46. 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 and Cadmium from Kale Chips II,
22 pursuant to Health and Safety Code Section 25249.7(b).

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

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26 **THIRD CAUSE OF ACTION**

27 **(By CONSUMER ADVOCACY GROUP, INC. and against MOTHER'S**
28 **MARKET, and DOES 21-30 for Violations of Proposition 65, The Safe Drinking**
Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et
seq.))

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Chips III

48. Plaintiff repeats and incorporates by reference paragraphs 1 through 47 of this complaint as though fully set forth herein.

49. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Kale Chips (“Kale Chips III”), including but not limited to:

- i. “California Snax”; “Natchos”; “cheesy flavor kale chips”; “LIVING FOODS”; “best if use by Dec 2024”; “2.7 Ounces 77 Grams”; “UPC 850497002106”; “Calif Snax”; “NATCHOS KALE CHIPS” and
- ii. “California Snax”; “Pizza”; “Pizza flavored kale chips”; “LIVING FOODS”; “best if use by June 2024”; “2.7 oz 77 Gm”; “UPC 837654893791”; “Calif Snax”; “PIZZA KALE”.

50. Kale Chips III contain Lead and Cadmium.

51. Defendants knew or should have known that the State of California has identified Lead as a chemical known to cause cancer, reproductive toxicity, and developmental toxicity and Cadmium as a chemical known to cause reproductive toxicity and developmental toxicity, and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of Lead and Cadmium in Kale Chips III within Plaintiff’s notice of alleged violations further discussed above at Paragraph 20f.

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

1 53. Plaintiff is informed, believes, and thereon alleges that between October 11, 2021 and
2 the present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Kale Chips III, 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 Kale Chips III in California. Defendants know and
7 intend that California consumers will use and consume Kale Chips III, thereby exposing
8 them to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
9 that Defendants are selling Kale Chips III under a brand or trademark that is owned or
10 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
11 Lead and Cadmium into Kale Chips III or knowingly caused Lead and Cadmium to be
12 created in Kale Chips III; have covered, obscured or altered a warning label that has been
13 affixed to Kale Chips III by the manufacturer, producer, packager, importer, supplier or
14 distributor of Kale Chips III; have received a notice and warning materials for exposure
15 from Kale Chips III without conspicuously posting or displaying the warning materials;
16 and/or have actual knowledge of potential exposure to Lead and Cadmium from Kale
17 Chips III. Defendants thereby violated Proposition 65.

18 54. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
19 Persons sustain exposures by eating and consuming Kale Chips III.

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

1 56. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 57. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Lead and Cadmium from Kale Chips III,
6 pursuant to Health and Safety Code Section 25249.7(b).

7 58. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

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

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17 Dated: January 29, 2025

YEROUSHALMI & YEROUSHALMI*

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19 */s/ Reuben Yeroushalmi*
20 Reuben Yeroushalmi
21 Attorneys for Plaintiff,
22 CONSUMER ADVOCACY GROUP, INC.
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