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9 CONSUMER ADVOCACY GROUP, INC.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
10/21/2024 at 10:15:59 AM
By: Milagros Cortez,
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

IHERB, LLC, a Delaware Limited Liability
Company;
BRAD'S RAW CHIPS, LLC, a Pennsylvania
Limited Liability Company;
AMAZON.COM SERVICES, LLC, a
Delaware Limited Liability Company;
AMAZON.COM, INC., a Delaware
Corporation;
and DOES 1-70,

Defendants.

CASE NO. **24CV096357**

COMPLAINT FOR PENALTY AND
INJUNCTION

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

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

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges seven causes of action
against defendants IHERB, LLC, BRAD'S RAW CHIPS, LLC, AMAZON.COM SERVICES,
LLC, AMAZON.COM, INC., and DOES 1-70 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 IHERB, LLC (“IHERB”) is a Delaware Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Defendant BRAD’S RAW CHIPS, LLC (“BRAD’S”) is a Pennsylvania Limited Liability Company, qualified to do business in Pennsylvania, and doing business in the State of California at all relevant times herein.
4. Defendant AMAZON.COM SERVICES, LLC (“AMAZON SERVICES”) is a Delaware Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
5. Defendant AMAZON.COM, INC. (“AMAZON”) is a Delaware Corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-70, 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.
7. At all times mentioned herein, the term “Defendants” includes IHERB, BRAD’S, AMAZON SERVICES, AMAZON and DOES 1-70.

- 1 8. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
2 times mentioned herein have conducted business within the State of California.
- 3 9. Upon information and belief, at all times relevant to this action, each of the Defendants,
4 including DOES 1-70, was an agent, servant, or employee of each of the other
5 Defendants. In conducting the activities alleged in this Complaint, each of the
6 Defendants was acting within the course and scope of this agency, service, or
7 employment, and was acting with the consent, permission, and authorization of each of
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint
9 were ratified and approved by every other Defendant or their officers or managing
10 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
11 alleged wrongful conduct of each of the other Defendants.
- 12 10. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
13 Defendants was a person doing business within the meaning of Health and Safety Code
14 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
15 employees at all relevant times.

JURISDICTION

- 17 11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
19 those given by statute to other trial courts. This Court has jurisdiction over this action
20 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
21 violations of Proposition 65 in any Court of competent jurisdiction.
- 22 12. This Court has jurisdiction over Defendants named herein because Defendants either
23 reside or are located in this State or are foreign corporations authorized to do business in
24 California, are registered with the California Secretary of State, or who do sufficient
25 business in California, have sufficient minimum contacts with California, or otherwise
26 intentionally avail themselves of the markets within California through their
27 manufacture, distribution, promotion, marketing, or sale of their products within
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1 California to render the exercise of jurisdiction by the California courts permissible
2 under traditional notions of fair play and substantial justice.

- 3 13. Venue is proper in the County of Alameda because one or more of the instances of
4 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
5 because Defendants conducted, and continue to conduct, business in the County of
6 Alameda with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

- 8 14. In 1986, California voters approved an initiative to address growing concerns about
9 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
10 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
11 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
12 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
13 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
14 from contamination, to allow consumers to make informed choices about the products
15 they buy, and to enable persons to protect themselves from toxic chemicals as they see
16 fit.

- 17 15. Proposition 65 requires the Governor of California to publish a list of chemicals known
18 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
19 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
20 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
21 other controls that apply to Proposition 65-listed chemicals.

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

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1 17. Proposition 65 provides that any person "violating or threatening to violate" the statute
2 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
3 25249.7. "Threaten to violate" means "to create a condition in which there is a
4 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
5 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
6 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

7 18. Plaintiff identified certain practices of manufacturers and distributors of Organic
8 Seaweed, Crunchy Kale Snacks, Crunchy Kale, Seaweed Chips, and Seaweed Salad of
9 exposing, knowingly and intentionally, persons in California to Lead and Lead
10 Compounds, Cadmium and Cadmium Compounds of such products without first
11 providing clear and reasonable warnings of such to the exposed persons prior to the time
12 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

13 19. On October 1, 1992 the Governor of California added Lead and Lead Compounds
14 ("Lead") to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
15 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
16 twenty (20) months after addition of Lead to the list of chemicals known to the State to
17 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
18 discharge prohibitions.

19 20. On February 27, 1987, the Governor of California added Lead to the list of chemicals
20 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
21 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
22 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
23 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
24 the State to cause developmental and reproductive toxicity, Lead became fully subject to
25 Proposition 65 warning requirements and discharge prohibitions.

26 21. On October 1, 1987 the Governor of California added Cadmium and Cadmium
27 Compounds ("Cadmium") to the list of chemicals known to the State to cause cancer

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

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

12 **SATISFACTION OF PRIOR NOTICE**

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

- 15 a. On or about January 28, 2021, Plaintiff gave notice of alleged violations of
16 Health and Safety Code Section 25249.6, concerning consumer products
17 exposures subject to a private action to AMAZON and to the California
18 Attorney General, County District Attorneys, and City Attorneys for each city
19 containing a population of at least 750,000 people in whose jurisdictions the
20 violations allegedly occurred, concerning the Organic Seaweed.
- 21 b. On or about July 9, 2021, 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 AMAZON and to the California Attorney General,
24 County District Attorneys, and City Attorneys for each city containing a
25 population of at least 750,000 people in whose jurisdictions the violations
26 allegedly occurred, concerning the Crunchy Kale Snacks.

- 1 c. On or about December 22, 2023, 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 IHERB, BRAD’S and to the California
4 Attorney General, County District Attorneys, and City Attorneys for each city
5 containing a population of at least 750,000 people in whose jurisdictions the
6 violations allegedly occurred, concerning the Crunchy Kale I.
- 7 d. On or about May 31, 2024, Plaintiff gave notice of alleged violations of Health
8 and Safety Code Section 25249.6, concerning consumer products exposures
9 subject to a private action to IHERB, and to the California Attorney General,
10 County District Attorneys, and City Attorneys for each city containing a
11 population of at least 750,000 people in whose jurisdictions the violations
12 allegedly occurred, concerning the Seaweed Chips I.
- 13 e. On or about July 10, 2024, Plaintiff gave notice of alleged violations of Health
14 and Safety Code Section 25249.6, concerning consumer products exposures
15 subject to a private action to IHERB, and to the California Attorney General,
16 County District Attorneys, and City Attorneys for each city containing a
17 population of at least 750,000 people in whose jurisdictions the violations
18 allegedly occurred, concerning the Seaweed Chips I.
- 19 f. On or about June 19, 2024, Plaintiff gave notice of alleged violations of Health
20 and Safety Code Section 25249.6, concerning consumer products exposures
21 subject to a private action to BRAD’S, AMAZON, AMAZON SERVICES, and
22 to the California Attorney General, County District Attorneys, and City
23 Attorneys for each city containing a population of at least 750,000 people in
24 whose jurisdictions the violations allegedly occurred, concerning the Crunchy
25 Kale II.
- 26 g. On or about June 19, 2024, Plaintiff gave notice of alleged violations of Health
27 and Safety Code Section 25249.6, concerning consumer products exposures
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1 subject to a private action to AMAZON, AMAZON SERVICES and to the
2 California Attorney General, County District Attorneys, and City Attorneys for
3 each city containing a population of at least 750,000 people in whose
4 jurisdictions the violations allegedly occurred, concerning the Seaweed Salad.

5 h. On or about July 29, 2024, Plaintiff gave notice of alleged violations of Health
6 and Safety Code Section 25249.6, concerning consumer products exposures
7 subject to a private action to IHERB, BRAD'S and to the California Attorney
8 General, County District Attorneys, and City Attorneys for each city containing
9 a population of at least 750,000 people in whose jurisdictions the violations
10 allegedly occurred, concerning the Crunchy Kale III.

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

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

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

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1 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notice of the alleged violations to IHERB, BRAD’S, AMAZON, AMAZON
3 SERVICES, and the public prosecutors referenced in Paragraph 23.

4 28. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
5 any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

7
8 **FIRST CAUSE OF ACTION**

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

12 **Seaweed I**

13 29. Plaintiff repeats and incorporates by reference paragraphs 1 through 28 of this complaint
14 as though fully set forth herein.

15 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Organic Seaweed (“Seaweed”), including but not
17 limited to the following: (i) “Chipotle Seasnax ® Strangely Addictive”; “Organic
18 Premium Roasted Seaweed Snack”; “Net Wt. 5g (0.18 oz); “G&G”; “SS-GO-CHIPOT”;
19 “UPC 6 09722 79840 2”; “Product of Korea”; (ii) “Chipotle Seasnax ® Strangely
20 Addictive”; “Organic Premium Roasted Seaweed Snack”; “Net Wt. 0.54 oz (15g); “SS-
21 CHIPOT”; “UPC 6 09722 79880 8”; “Product of Korea”; (iii) “Jalapeno Seasnax ®
22 Strangely Addictive”; “Organic Premium Roasted Seaweed Snack”; “Net Wt. 10g (0.36
23 oz); “SS-BGO-JAL”; “UPC 8 11201 02003 8”; “Product of Korea”; (iv) “Lime Seasnax
24 ® Strangely Addictive”; “Organic Premium Roasted Seaweed Snack”; “Net Wt. 10g
25 (0.36 oz); “SS-BGO-LIME”; “UPC 8 11201 02002 1”; “Product of Korea”; (v) “Onion
26 Seasnax ® Strangely Addictive”; “Organic Premium Roasted Seaweed Snack”; “Six
27 Pack”; “Net Wt. 5g (0.18 oz); “SS-GO-ONION-6PK”; “UPC 6 09722 79847 1”;
28 “Product of Korea”.

31. Seaweed contains Lead and Cadmium.

1 32. Defendants knew or should have known that Lead and Cadmium has been identified by
2 the State of California as a chemical known to cause cancer, and reproductive toxicity
3 and therefore was subject to Proposition 65 warning requirements. Defendants were also
4 informed of the presence of Lead and Cadmium in Seaweed within Plaintiff's notice of
5 alleged violations further discussed above at Paragraph 23a.

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

12 34. Plaintiff is informed, believes, and thereon alleges that between January 28, 2018 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Seaweed, which Defendants manufactured, distributed, or sold as
15 mentioned above, to Lead and Cadmium, without first providing any type of clear and
16 reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold Seaweed in California. Defendants know and
18 intend that California consumers will use and consume Seaweed, thereby exposing them
19 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
20 Defendants are selling Seaweed under a brand or trademark that is owned or licensed by
21 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
22 Cadmium into Seaweed or knowingly caused Lead and Cadmium to be created in
23 Seaweed; have covered, obscured or altered a warning label that has been affixed to
24 Seaweed by the manufacturer, producer, packager, importer, supplier or distributor of
25 Seaweed; have received a notice and warning materials for exposure from Seaweed
26 without conspicuously posting or displaying the warning materials; and/or have actual

1 knowledge of potential exposure to Lead and Cadmium from Seaweed. Defendants
2 thereby violated Proposition 65.

3 35. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
4 Persons sustain exposures by eating and consuming Seaweed.

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

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against AMAZON and DOES**
22 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
23 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

24 **Seaweed Snacks**

25 40. Plaintiff repeats and incorporates by reference paragraphs 1 through 39 of this complaint
26 as though fully set forth herein.

27 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Crunchy Kale Snacks ("Kale Snacks"), including but
not limited to "Brad's Crunchy Kale"; "Net Wt. 2 oz (57g)"; "UPC 8 13104 02071 9".

1 42. Kale Snacks contains Cadmium.

2 43. Defendants knew or should have known that Cadmium has been identified by the State
3 of California as a chemical known to cause cancer, and reproductive toxicity and
4 therefore was subject to Proposition 65 warning requirements. Defendants were also
5 informed of the presence of Cadmium in Kale Snacks within Plaintiff's notice of alleged
6 violations further discussed above at Paragraph 23b.

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

13 45. Plaintiff is informed, believes, and thereon alleges that between July 9, 2018 and the
14 present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Kale Snacks, which Defendants manufactured, distributed, or
16 sold as mentioned above, to Cadmium, without first providing any type of clear and
17 reasonable warning of such to the exposed persons before the time of exposure.
18 Defendants have distributed and sold Kale Snacks in California. Defendants know and
19 intend that California consumers will use and consume Kale Snacks, thereby exposing
20 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
21 Defendants are selling Kale Snacks under a brand or trademark that is owned or licensed
22 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
23 into Kale Snacks or knowingly caused Cadmium to be created in Kale Snacks; have
24 covered, obscured or altered a warning label that has been affixed to Kale Snacks by the
25 manufacturer, producer, packager, importer, supplier or distributor of Kale Snacks; have
26 received a notice and warning materials for exposure from Kale Snacks without
27 conspicuously posting or displaying the warning materials; and/or have actual

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1 knowledge of potential exposure to Cadmium from Kale Snacks. Defendants thereby
2 violated Proposition 65.

3 46. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
4 Persons sustain exposures by eating and consuming Kale Snacks.

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

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

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

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

19
20 **THIRD CAUSE OF ACTION**

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

24 **Kale**

25 51. Plaintiff repeats and incorporates by reference paragraphs 1 through 50 of this complaint
26 as though fully set forth herein.

27 52. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Crunchy Kale ("Crunchy Kale I"), including but not
limited to "BRAD'S BUCKS COUNTRY, USA"; "Plant Based"; "CRUNCHY KALE";

1 “VAMPIRE KILLER”; “SNACK WITH PURPOSE”; “1/2LB MADE WITH REAL
2 VEGGIES”; “AIR DRIED NEVER BAKED OR FRIED”; “NET WT. 2 OZ (57g)”; “8
3 13104 02006 1”.

4 53. Crunchy Kale I contains Lead and Cadmium.

5 54. Defendants knew or should have known that Lead and Cadmium has been identified by
6 the State of California as a chemical known to cause cancer, and reproductive toxicity
7 and therefore was subject to Proposition 65 warning requirements. Defendants were also
8 informed of the presence of Lead and Cadmium in Crunchy Kale I within Plaintiff’s
9 notice of alleged violations further discussed above at Paragraph 23c.

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

17 56. Plaintiff is informed, believes, and thereon alleges that between December 22, 2020 and
18 the present, each of the Defendants knowingly and intentionally exposed California
19 consumers and users of Crunchy Kale I, which Defendants manufactured, distributed, or
20 sold as mentioned above, to Lead and Cadmium, without first providing any type of clear
21 and reasonable warning of such to the exposed persons before the time of exposure.
22 Defendants have distributed and sold Crunchy Kale I in California. Defendants know
23 and intend that California consumers will use and consume Crunchy Kale I, thereby
24 exposing them to Lead and Cadmium. Further, Plaintiff is informed, believes, and
25 thereon alleges that Defendants are selling Crunchy Kale I under a brand or trademark
26 that is owned or licensed by the Defendants or an entity affiliated thereto; have
27 knowingly introduced Lead and Cadmium into Crunchy Kale I or knowingly caused
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1 62. Plaintiff repeats and incorporates by reference paragraphs 1 through 61 of this complaint
2 as though fully set forth herein.

3 63. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Seaweed Chips, including but not limited to
5 “Seasnax”; “CHOMPERZ”; “CRUNCHY SEAWEED CHIPS”; “Onion”; “Naturally
6 Delicious!”; “1 oz (30g)”; “Manufactured for: SeaSnax”; “Product of Korea”; “SCH-
7 SNK-ONN”; “UPC 812201020212”; “06.21.2024”.

8 64. Seaweed Chips contains Cadmium.

9 65. Defendants knew or should have known that Cadmium has been identified by the State
10 of California as a chemical known to cause cancer, and reproductive toxicity and
11 therefore was subject to Proposition 65 warning requirements. Defendants were also
12 informed of the presence of Cadmium in Seaweed Chips within Plaintiff's notice of
13 alleged violations further discussed above at Paragraph 23d and 23e.

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

20 67. Plaintiff is informed, believes, and thereon alleges that between May 31, 2021 and the
21 present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Seaweed Chips, which Defendants manufactured, distributed, or
23 sold as mentioned above, to Cadmium, without first providing any type of clear and
24 reasonable warning of such to the exposed persons before the time of exposure.
25 Defendants have distributed and sold Seaweed Chips in California. Defendants know
26 and intend that California consumers will use and consume Seaweed Chips, thereby
27 exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges

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

10 68. The principal routes of exposure are through dermal contact, ingestion and inhalation.
11 Persons sustain exposures by handling Seaweed Chips without wearing gloves or any
12 other personal protective equipment, or by touching bare skin or mucous membranes
13 with gloves after handling Seaweed Chips, as well as through direct and indirect hand to
14 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
15 from Seaweed Chips.

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

23 70. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
25 violations alleged herein will continue to occur into the future.
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1 71. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Cadmium from Seaweed Chips, pursuant to
3 Health and Safety Code Section 25249.7(b).

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

6
7 **FIFTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against BRAD’S, AMAZON,**
9 **AMAZON SERVICES, and DOES 41-50 for Violations of Proposition 65, The Safe**
10 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
11 **25249.5, *et seq.*))**

12 **Snacks I**

13 72. Plaintiff repeats and incorporates by reference paragraphs 1 through 71 of this complaint
14 as though fully set forth herein.

15 73. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Crunchy Kale (“Crunchy Kale II”), including but not
17 limited to “Brad’s Plant Based Organic Crunchy Kale”; “Net Weight: 2 oz (57g)”; “UPC
18 813104020719”; “Product of Mexico”; “Manufactured by: Brad’s Raw Chips, LLC”;
19 “EXP: SEP-27-2024”.

20 74. Crunchy Kale II contains Cadmium.

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

26 76. Plaintiff’s allegations regarding Crunchy Kale II concerns “[c]onsumer products
27 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
28 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, §*

1 25602(b). Crunchy Kale II are consumer products, and, as mentioned herein, exposures
2 to Cadmium took place as a result of such normal and foreseeable consumption and use.

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

21 78. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
22 Persons sustain exposures by eating and consuming Crunchy Kale II.

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

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

6 81. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to Cadmium from Crunchy Kale II, pursuant
8 to Health and Safety Code Section 25249.7(b).

9 Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11 **SIXTH CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against AMAZON, AMAZON**
13 **SERVICES, and DOES 51-60 for Violations of Proposition 65, The Safe Drinking**
14 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
15 ***seq.*))**

16 **Seaweed III**

17 82. Plaintiff repeats and incorporates by reference paragraphs 1 through 81 of this complaint
18 as though fully set forth herein.

19 83. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Seaweed Salad, including but not limited to
21 “SeaVegi”; “Seaweed Salad Mix”; “by SeaSnax”; “Net Wt. 0.9oz (25g)”; “Wakame,
22 Agar, Suginori, Tsunomata, Maufnori”; “Best by: 12-27-2024”; “X0041L2D8R”; “6
23 09722 79850 1”; “Distributed by: SeaSnax”.

24 84. Seaweed Salad contains Lead.

25 85. Defendants knew or should have known that Lead has been identified by the State of
26 California as a chemical known to cause cancer, and reproductive toxicity and therefore
27 was subject to Proposition 65 warning requirements. Defendants were also informed of
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1 the presence of Lead in Seaweed Salad within Plaintiff's notice of alleged violations
2 further discussed above at Paragraph 23g.

3 86. Plaintiff's allegations regarding Seaweed Salad 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)*. Seaweed Salad is a consumer products, and, as mentioned herein, exposures to
8 Lead took place as a result of such normal and foreseeable consumption and use.

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

26 88. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
27 Persons sustain exposures by eating and consuming Seaweed Salad.

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1 89. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
2 Proposition 65 as to Seaweed Salad 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 Seaweed Salad, so that a separate and distinct violation of Proposition 65 occurred each
6 and every time a person was exposed to Lead by Seaweed Salad as mentioned herein.

7 90. 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 91. Based on the allegations herein, Defendants are liable for civil penalties of up to
11 \$2,500.00 per day per individual exposure to Lead from Seaweed Salad, pursuant to
12 Health and Safety Code Section 25249.7(b).

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

15 **SEVENTH CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against BRAD’S, IHERB, an**
17 **DOES 61-70 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
18 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

19 **Snacks II**

20 92. Plaintiff repeats and incorporates by reference paragraphs 1 through 91 of this complaint
21 as though fully set forth herein.

22 93. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Crunchy Kale (“Crunchy Kale III”), including but not
24 limited to “BRAD’S”; “Plant based”; “CRUNCHY KALE”; “CHEEZE IT UP”; “NET
25 WT. 2 OZ (57g)”; “DISTRIBUTED BY: BRAD’S RAW CHIPS, LLC”; “UPC
26 913104021877”; “PRODUCT OF MEXICO”; “EXP: DEC-23-2024”.

27 94. Crunchy Kale III contains Cadmium.

1 95. Defendants knew or should have known that Cadmium has been identified by the State
2 of California as a chemical known to cause cancer, and reproductive toxicity and
3 therefore was subject to Proposition 65 warning requirements. Defendants were also
4 informed of the presence of Cadmium in Crunchy Kale III within Plaintiff's notice of
5 alleged violations further discussed above at Paragraph 23h.

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

12 97. Plaintiff is informed, believes, and thereon alleges that between July 29, 2021 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Crunchy Kale III, which Defendants manufactured, distributed,
15 or sold as mentioned above, to Cadmium, without first providing any type of clear and
16 reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold Crunchy Kale III in California. Defendants know
18 and intend that California consumers will use and consume Crunchy Kale III, thereby
19 exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
20 that Defendants are selling Crunchy Kale III under a brand or trademark that is owned or
21 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
22 Cadmium into Crunchy Kale III or knowingly caused Cadmium to be created in Crunchy
23 Kale III; have covered, obscured or altered a warning label that has been affixed to
24 Crunchy Kale III by the manufacturer, producer, packager, importer, supplier or
25 distributor of Crunchy Kale III; have received a notice and warning materials for
26 exposure from Crunchy Kale III without conspicuously posting or displaying the

1 warning materials; and/or have actual knowledge of potential exposure to Cadmium
2 from Crunchy Kale III. Defendants thereby violated Proposition 65.

3 98. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
4 Persons sustain exposures by eating and consuming Crunchy Kale III.

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

12 100. 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.

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

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

20 **PRAYER FOR RELIEF**

21 Plaintiff demands against each of the Defendants as follows:

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

1 Dated: October 21, 2024

YEROUSHALMI & YEROUSHALMI*

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3
4 */s/ Reuben Yeroushalmi*
5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 CONSUMER ADVOCACY GROUP, INC.
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