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9 CONSUMER ADVOCACY GROUP, INC.

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David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 ROXY TRADING, INC., a California
17 Corporation;
18 and DOES 1-20,

19 Defendants.

CASE NO. **25STCV11395**

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)

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25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
26 against defendants ROXY TRADING, INC., and DOES 1-20 as follows:
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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 ROXY TRADING, INC. (“ROXY”) 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 ROXY 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 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

23 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

1 16. On October 1, 1992, the Governor of California added Lead and Lead Compounds
2 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
3 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
4 twenty (20) months after addition of Lead to the list of chemicals known to the State to
5 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
6 discharge prohibitions.

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

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

22 **SATISFACTION OF PRIOR NOTICE**

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

- 25 a. On or about May 31, 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 ROXY and to the California Attorney General,
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County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Whole Scallops.

- b. On or about July 10, 2024, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to ROXY, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Whole Scallops.

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

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

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

1 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notice of the alleged violations to ROXY and the public prosecutors referenced in
3 Paragraph 19.

4 24. 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.

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8 **FIRST CAUSE OF ACTION**

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

12 **Seafood Products I**

13 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint
14 as though fully set forth herein.

15 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Whole Scallops (“Scallops I”).

17 27. Scallops I contains Lead and Cadmium.

18 28. Defendants knew or should have known that the State of California has identified Lead
19 as a chemical known to cause cancer, developmental and reproductive toxicity, and
20 Cadmium as a chemical known to cause developmental and reproductive toxicity, and
21 therefore was subject to Proposition 65 warning requirements. Defendants were also
22 informed of the presence of Lead and Cadmium in Scallops I within Plaintiff's notice of
23 alleged violations further discussed above at Paragraph 19a.

24 29. Plaintiff's allegations regarding Scallops I concerns “[c]onsumer products exposure[s],”
25 which “is an exposure that results from a person’s acquisition, purchase, storage,
26 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
27 that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).
28 Scallops I 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 30. Plaintiff is informed, believes, and thereon alleges that between May 31, 2021, and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Scallops I, which Defendants manufactured, distributed, or sold
4 as mentioned above, to Lead and Cadmium, without first providing any type of clear and
5 reasonable warning of such to the exposed persons before the time of exposure.

6 Defendants have distributed and sold Scallops I in California. Defendants know and
7 intend that California consumers will use and consume Scallops I, thereby exposing
8 them to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
9 that Defendants are selling Scallops I 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 Scallops I or knowingly caused Lead and Cadmium to be
12 created in Scallops I; have covered, obscured or altered a warning label that has been
13 affixed to Scallops I by the manufacturer, producer, packager, importer, supplier or
14 distributor of Scallops I; have received a notice and warning materials for exposure from
15 Scallops I without conspicuously posting or displaying the warning materials; and/or
16 have actual knowledge of potential exposure to Lead and Cadmium from Scallops I.
17 Defendants thereby violated Proposition 65.

18 31. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
19 Persons sustain exposures by eating and consuming the Scallops I.

20 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
21 Proposition 65 as to Scallops I 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 Scallops
24 I, so that a separate and distinct violation of Proposition 65 occurred each and every time
25 a person was exposed to Lead and Cadmium by Scallops I as mentioned herein.
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1 33. 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 34. 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 Scallops I,
6 pursuant to Health and Safety Code Section 25249.7(b).

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

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10 **SECOND CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against ROXY and DOES 11-
12 20 for Violations of Proposition 65, The Safe Drinking Water and Toxic
13 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

14 **Seafood Products II**

15 36. Plaintiff repeats and incorporates by reference paragraphs 1 through 35 of this complaint
16 as though fully set forth herein.

17 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Whole Scallops ("Scallops II"), identified as: "RX
19 SEASONING SCALLOP"; "0000000103070"; "N.W.: 3.8 OZ (100G)"; "Distributed by:
20 ROXY TRADING INC."; "SEASONING WHOLE SCALLOP (CHILI FLAVOR)";
21 "PRODUCT OF JAPAN".

22 38. Scallops II contains Lead and Cadmium.

23 39. Defendants knew or should have known that the State of California has identified Lead
24 as a chemical known to cause cancer, developmental and reproductive toxicity, and
25 Cadmium as a chemical known to cause developmental and reproductive toxicity, and
26 therefore was subject to Proposition 65 warning requirements. Defendants were also
27 informed of the presence of Lead and Cadmium in Scallops II within Plaintiff's notice of
28 alleged violations further discussed above at Paragraph 19b.

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

7 41. Plaintiff is informed, believes, and thereon alleges that between July 10, 2024, and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Scallops II, which Defendants manufactured, distributed, or sold
10 as mentioned above, to Lead and 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 Scallops II in California. Defendants know and
13 intend that California consumers will use and consume Scallops II, thereby exposing
14 them to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
15 that Defendants are selling Scallops II under a brand or trademark that is owned or
16 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
17 Lead and Cadmium into Scallops II or knowingly caused Lead and Cadmium to be
18 created in Scallops II; have covered, obscured or altered a warning label that has been
19 affixed to Scallops II by the manufacturer, producer, packager, importer, supplier or
20 distributor of Scallops II; have received a notice and warning materials for exposure
21 from Scallops II without conspicuously posting or displaying the warning materials;
22 and/or have actual knowledge of potential exposure to Lead and Cadmium from Scallops
23 II. Defendants thereby violated Proposition 65.

24 42. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
25 Persons sustain exposures by eating and consuming the Scallops II.

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

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

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

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

PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: April 18, 2025

YEROUSHALMI & YEROUSHALMI*

/s/ Reuben Yeroushalmi

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