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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

KIM'C MARKET INC., a Delaware
Corporation;
SULSUNG FOODS, a Wyoming
Corporation;
and DOES 1-10,

Defendants.

CASE NO. **26ST CV 24717**

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 one cause of action against
defendants KIM'C MARKET INC.; SULSUNG FOODS and DOES 1-10 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 KIM’C MARKET INC. (“KIM’C”) is a Delaware Corporation doing business in the State of California at all relevant times herein.
3. Defendant SULSUNG FOODS (“SULSUNG”) is a Wyoming Corporation 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 1-10, 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 KIM’C, SULSUNG and DOES 1-10.
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 1-10, 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.

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

JURISDICTION

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

BACKGROUND AND PRELIMINARY FACTS

12. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to

chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

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

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

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

16. Plaintiff identified certain practices of manufacturers and distributors of Octopus Chips of exposing, knowingly and intentionally, persons in California to Cadmium and Cadmium Compounds of such products without first providing clear and reasonable

warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

SATISFACTION OF PRIOR NOTICE

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

a. On or about June 2, 2026, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to KIM'C, SULSUNG, 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 Octopus Chips.

19. 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 Cadmium, and the corporate structure of each of the Defendants.

20. 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 Cadmium, the subject Proposition 65-listed chemical of this action. Based on that information, the

1 attorney for Plaintiff who executed the Certificate of Merit believed there was a
2 reasonable and meritorious case for this private action. The attorney for Plaintiff
3 attached to the Certificate of Merit served on the Attorney General the confidential
4 factual information sufficient to establish the basis of the Certificate of Merit.

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

8 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notice of the alleged violations to KIM'C, SULSUNG and the public prosecutors
10 referenced in Paragraph 18.

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

14 **FIRST CAUSE OF ACTION**

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

18 **Seafood Products**

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

21 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Octopus Chips ("Octopus Chips"), identified as: "31
23 Store"; "Octopus Long Chips (Hot & Spicy)"; "MFG DATE: 2025/04/01"; "BEST
24 BEFORE: 2026/03/31"; "Imported By: Sulsung Foods"; "UPC 8809871140004".

25 26. Octopus Chips contains Cadmium.

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

1 informed of the presence of Cadmium in Octopus Chips within Plaintiff's notice of
2 alleged violations further discussed above at Paragraphs 18a.

3 28. Plaintiff's allegations regarding Octopus Chips 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)*. Octopus Chips 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 29. Plaintiff is informed, believes, and thereon alleges that between June 2, 2023 and the
10 present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Octopus Chips, 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 Octopus Chips in California. Defendants know
15 and intend that California consumers will use and consume Octopus Chips, thereby
16 exposing them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges
17 that Defendants are selling Octopus Chips under a brand or trademark that is owned or
18 licensed by the Defendants or an entity affiliated thereto; have covered, obscured or
19 altered a warning label that has been affixed to Octopus Chips by the manufacturer,
20 producer, packager, importer, supplier or distributor of Octopus Chips; have received a
21 notice and warning materials for exposure from Octopus Chips without conspicuously
22 posting or displaying the warning materials; and/or have actual knowledge of potential
23 exposure to Cadmium from Octopus Chips. Defendants thereby violated Proposition 65.

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

26 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to Octopus Chips have been ongoing and continuous, as Defendants
28

engaged and continue to engage in conduct which violates Health and Safety Code Section 25249.6, including the manufacture, distribution, promotion, and sale of Octopus Chips, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to Cadmium by Octopus Chips as mentioned herein.

32. 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.

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

34. 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: August 4, 2026

YEROUSHALMI & YEROUSHALMI*

/s/ Reuben Yeroushalmi

Reuben Yeroushalmi

Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.