**SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986**

(*Cal. Health & Safety Code* § 25249.5, *et seq.*)

December 4, 2019

Cali Mart
Cali Foods Market, Inc.
*Agent for Service of Process*
Kim Lee
1000 E Valley Blvd.
Alhambra, CA 91801

Kim-Seng Co.
IHA Beverage
Kim Seng Company
*Agent for Service of Process*
Jiayang Tsai
6121 Randolph St.
City of Commerce, CA 90040

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 Concerning **Dried Seaweeds** Containing **Inorganic Arsenic Compounds ("Arsenic"), Cadmium and Cadmium Compounds ("Cadmium")** and **Lead and Lead Compounds ("Lead")**

To whom else this may concern:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity, located at 9903 Santa Monica Boulevard #225, Beverly Hills, California 90212, serves this Notice of Violation ("Notice") on the **Above Listed Entities** ("Violators"), pursuant to and in compliance with The Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"). Violators may contact CAG concerning this Notice through its designated person, its attorney, Reuben Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

CAG is an organization based in California. CAG is an entity dedicated to protecting the consumer environment, improving human health, and supporting environmentally sound commercial practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65.

This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." CAL. HEALTH & SAFETY CODE § 25249.6.

CAG has discovered **Dried Seaweeds**, specifically **Dried Seaweeds ("Seaweeds")** containing **Arsenic, Cadmium** and **Lead**. On October 1, 1992, the Governor of California added Lead to the list of chemicals known to the State to cause cancer and on February 27, 1987, the Governor added Lead to the list of chemicals

known to the State to cause developmental toxicity, male reproductive toxicity, and female reproductive toxicity. On October 1, 1987, the Governor of California added Cadmium to the list of chemicals known to the State to cause cancer and on May 1, 1997, the Governor added Cadmium to the list of chemicals known to the State to cause developmental toxicity and male reproductive toxicity. On February 27, 1987, the Governor of California added Arsenic Compounds to the list of chemicals known to the State to cause cancer and on May 1, 1997, the Governor of California added Arsenic Oxides to the list of chemicals known to the state to cause developmental toxicity. The above additions took place more than twenty (20) months before CAG served this Notice.

An exemplar of the violations caused by **Seaweeds** containing **Arsenic, Cadmium,** and **Lead** *includes but is not limited to:*

- **"DOUBLE PARROT;" "DIRED SEAWEED;" "NET WT: 1.40oz(40g);" "PRODUCT OF CHINA;" "DISTRIBUTOR: IHA BEVERAGE COMMERCE, CA 90040;" "6 10232 00739 7;"**

This Notice addresses consumer products exposures. A "'[c]onsumer products exposure' is an exposure which 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. 27 tit. § 25602(b).

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available **Seaweeds** for distribution or sale to consumers. The packaging for **Seaweeds** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violators, with regard to **Seaweeds**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to **Seaweeds**, provide identification of the product at retail outlets in a manner that provided a compliant warning through shelf labeling, signs, menus, or a combination thereof.

These violations occurred each day between December 4, 2016, and December 4, 2019, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, inhalation, and ingestion. Persons sustain exposures by eating, mixing, or handling the **Seaweeds** without wearing gloves or by touching bare skin or mucous membranes with or without gloves after handling **Seaweeds**, as well as direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating from the **Seaweeds** during use, as well as through environmental mediums that carry the **Arsenic, Cadmium,** and **Lead** once contained within the **Seaweeds**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. CAL. HEALTH & SAFETY CODE § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice, CAG may file suit. *See* CAL. CIV. PROC. CODE § 1013; CAL. HEALTH & SAFETY CODE § 25249.7(d)(1); and CAL. CODE REGS. tit. 27 § 25903(d)(1). Per Cal. Code Regs. tit. 27, § 25600.2(g) (2018) the retail seller noticed on this 60-Day Notice is hereby requested to promptly provide the names and contact information for the manufacturer(s), producer(s), packager(s), importer(s), supplier(s), and/or distributor(s) of the product(s) identified in this Notice.

CAG remains open and willing to discussing the possibility of resolving its grievances short of formal litigation. With the copy of this Notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: 12/4/19

Reuben Yeroushalmi
Yeroushalmi & Yeroushalmi
Attorneys for Consumer Advocacy Group, Inc.

## Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: http://oehha.ca.gov/prop65/law/P65law72003.html. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.[1] These implementing regulations are available online at: http://oehha.ca.gov/prop65/law/P65Regs.html.

*WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that

chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

*DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (http://www.oehha.ca.gov/prop65/law/index.html) to determine all applicable exemptions, the most common of which are the following:

***Grace Periods.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity

by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant[2] it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

*HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to $2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

• An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;

• An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

• An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;

• An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form can be downloaded from OEHHA's website at: http://oehha.ca.gov/prop65/law/p65law72003.html.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

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[1] All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: http://www.oehha.ca.gov/prop65/law/index.html.

[2] See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

**Dried Seaweeds containing Arsenic, Cadmium,** and **Lead**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party.

3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 12/4/19

By: Reuben Yeroushalmi

## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

**Name and address of each party to whom documents were mailed:**

Cali Mart
Cali Foods Market, Inc.
*Agent for Service of Process*
Kim Lee
1000 E Valley Blvd.
Alhambra, CA 91801

Kim-Seng Co.
IHA Beverage
Kim Seng Company
*Agent for Service of Process*
Jiayang Tsai
6121 Randolph St.
City of Commerce, CA 90040

**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: 12/04/2019

By: Hya Gingoyon

## Distribution List

| | | |
|---|---|---|
| Alpine County District Attorney<br>PO Box 248<br>Markleeville, CA 96120 | Lake County District Attorney<br>255 N Forbes St<br>Lakeport, CA 95453-4790 | San Benito County District Attorney<br>419 4th St<br>Hollister, CA 95023 |
| Amador County District Attorney<br>708 Court, Suite 202<br>Jackson, CA 95642 | Madera County District Attorney<br>209 W Yosemite Ave<br>Madera, CA 93637 | San Bernardino County District Attorney<br>316 N Mountain View Ave<br>San Bernardino, CA 92415-0004 |
| Butte County District Attorney<br>25 County Center Dr.<br>Oroville, CA 95965-3385 | Mariposa County District Attorney<br>P.O. Box 730<br>Mariposa, CA 95338 | Siskiyou County District Attorney<br>PO Box 986<br>Yreka, CA 96097 |
| Colusa County District Attorney<br>346 5th Street, Suite 101<br>Colusa, CA 95932 | Marin County District Attorney<br>3501 Civic Center Drive, #130<br>San Rafael, CA 94903 | Solano County District Attorney<br>600 Union Ave<br>Fairfield, CA 94533 |
| Del Norte County District Attorney<br>450 "H" St.<br>Crescent City, CA 95531 | Mendocino County District Attorney<br>P.O. Box 1000<br>Ukiah, CA 95482 | Shasta County District Attorney<br>1355 West Street<br>Redding, CA 96001 |
| El Dorado County District Attorney<br>515 Main St.<br>Placerville, CA 95667-5697 | Modoc County District Attorney<br>204 S. Court Street<br>Alturas, CA 96101-4020 | Sierra County District Attorney<br>PO Box 457<br>Downieville, CA 95936-0457 |
| Fresno County District Attorney<br>2220 Tulare St, Ste. 1000<br>Fresno, CA 93721 | Merced County District Attorney<br>650 W. 20th Street<br>Merced, CA 95340 | San Jose City Attorney<br>151 W. Mission St.<br>San Jose, CA 95110 |
| Glenn County District Attorney<br>PO Box 430<br>Willows, CA 95988 | Mono County District Attorney<br>PO Box 617<br>Bridgeport, CA 93517 | Stanislaus County District Attorney<br>PO Box 442<br>Modesto, CA 95353 |
| Humboldt County District Attorney<br>825 5th St., 4th Floor<br>Eureka, CA 95501 | Nevada County District Attorney<br>201 Commercial Street<br>Nevada City, CA 95959 | San Mateo County District Attorney<br>400 County Center<br>Redwood City, CA 94063 |
| Imperial County District Attorney<br>939 W. Main St., 2nd Floor<br>El Centro, CA 92243-2860 | Office of the Attorney General<br>P.O. Box 70550<br>Oakland, CA 94612-0550 | Trinity County District Attorney<br>PO Box 310<br>Weaverville, CA 96093 |
| Kern County District Attorney<br>1215 Truxtun Ave.<br>Bakersfield, CA 93301 | Orange County District Attorney<br>PO Box 808<br>Santa Ana, CA 92702 | Tehama County District Attorney<br>P.O. Box 519<br>Red Bluff, CA 96080 |
| Kings County District Attorney<br>Gov't Ctr, 1400 W Lacey Blvd<br>Hanford, CA 93230 | Plumas County District Attorney<br>520 Main Street, Rm 404<br>Quincy, CA 95971 | Tuolumne County District Attorney<br>2 S Green St<br>Sonora, CA 95370 |
| Los Angeles County District Attorney<br>210 W Temple St, 18th Floor<br>Los Angeles, CA 90012 | Placer County District Attorney<br>10810 Justice Center Drive<br>Suite 240<br>Roseville, CA 95678-6231 | Yuba County District Attorney<br>215 5th St<br>Marysville, CA 95901 |
| Los Angeles City Attorney<br>200 N Main St Ste 1800<br>Los Angeles CA 90012 | Sutter County District Attorney<br>446 Second Street<br>Yuba City, CA 95991 | |

## Electronic Service

| | | |
|---|---|---|
| Alameda County District Attorney<br>CEPDProp65@acgov.org | Contra Costa County District Attorney<br>sgrassini@contracostada.org | Calaveras County District Attorney<br>Prop65Env@co.calaveras.ca.us |
| Monterey County District Attorney<br>Prop65DA@co.monterey.ca.us | Inyo County District Attorney<br>inyoda@inyocounty.us | Lassen County District Attorney<br>mlatimer@co.lassen.ca.us |
| Sacramento County District Attorney<br>Prop65@sacda.org | Napa County District Attorney<br>CEPD@countyofnapa.org | Riverside County District Attorney<br>Prop65@rivcoda.org |
| San Francisco County District Attorney<br>gregory.alker@sfgov.org | Santa Barbara County District Attorney<br>DAProp65@co.santa-barbara.ca.us | Santa Clara County District Attorney<br>EPU@da.sccgov.org |
| San Francisco City Attorney<br>valerie.lopez@sfcityatty.org | Santa Cruz County District Attorney<br>Prop65DA@santacruzcounty.us | San Diego City Attorney<br>CityAttyCrimProp65@sandiego.gov |
| Sonoma County District Attorney<br>jbarnes@sonoma-county.org | San Joaquin County District Attorney<br>DAConsumer.Environmental@sjcda.org | San Luis Obispo County District Attorney<br>edobroth@co.slo.ca.us |
| Tulare County District Attorney<br>Prop65@co.tulare.ca.us | Ventura County District Attorney<br>daspecialops@ventura.org | Yolo County District Attorney<br>cfepd@yolocounty.org |