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7 Consumer Advocacy Group, Inc.

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11  
12 CONSUMER ADVOCACY GROUP, INC.,  
13 in the public interest,

14 Plaintiff,

15 v.

16 CTC FOOD INTERNATIONAL, INC., a  
17 California Corporation; TAWA  
SUPERMARKET, INC., a California  
18 Corporation; ORIENTAL TRADING CO., is  
a business entity form unknown, HOA BINH  
19 POMONA SUPERMARKET, a business  
20 entity form unknown; and DOES 1-20;

21 Defendants.

CASE NO.

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 \$25,000)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
23 Defendants CTC FOOD INTERNATIONAL, TAWA SUPERMARKET, INC., HOA BINH  
24 POMONA SUPERMARKET, and DOES 1-20 as follows:

25 **THE PARTIES**

- 26 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
27 organization qualified to do business in the State of California. CAG is a person within  
28

**FILED BY FAX**

ALAMEDA COUNTY

September 04, 2015

CLERK OF  
THE SUPERIOR COURT  
By Alicia Espinoza, Deputy

CASE NUMBER:  
**RG15784625**

1 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
2 as a private attorney general, brings this action in the public interest as defined under  
3 Health and Safety Code section 25249.7, subdivision (d).

- 4 2. Defendant CTC FOOD INTERNATIONAL ("CTC") is a California Corporation doing  
5 business in the State of California at all relevant times herein.
- 6 3. Defendant TAWA SUPERMARKET, INC. ("TAWA") is a California Corporation doing  
7 business in the State of California at all relevant times herein.
- 8 4. Defendant ORIENTAL TRADING CO. ("ORIENTAL") is a business entity form  
9 unknown doing business in the State of California at all relevant times herein.
- 10 5. Defendant HOA BINH POMONA SUPERMARKET ("HOA") is a business entity form  
11 unknown doing business in the State of California at all relevant times herein.
- 12 6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
14 complaint to allege their true names and capacities when ascertained. Plaintiff is  
15 informed, believes, and thereon alleges that each fictitiously named defendant is  
16 responsible in some manner for the occurrences herein alleged and the damages caused  
17 thereby.
- 18 7. At all times mentioned herein, the term "Defendants" includes CTC, TAWA,  
19 ORIENTAL, HOA and DOES 1-20.
- 20 8. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
21 times mentioned herein have conducted business within the State of California.
- 22 9. Upon information and belief, at all times relevant to this action, each of the Defendants,  
23 including DOES 1-20, was an agent, servant, or employee of each of the other  
24 Defendants. In conducting the activities alleged in this Complaint, each of the  
25 Defendants was acting within the course and scope of this agency, service, or  
26 employment, and was acting with the consent, permission, and authorization of each of  
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
28 were ratified and approved by every other Defendant or their officers or managing agents.

1 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
2 wrongful conduct of each of the other Defendants.

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

### 7 JURISDICTION

8 11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
9 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
10 those given by statute to other trial courts. This Court has jurisdiction over this action  
11 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
12 violations of Proposition 65 in any Court of competent jurisdiction.

13 12. This Court has jurisdiction over Defendants named herein because Defendants either  
14 reside or are located in this State or are foreign corporations authorized to do business in  
15 California, are registered with the California Secretary of State, or who do sufficient  
16 business in California, have sufficient minimum contacts with California, or otherwise  
17 intentionally avail themselves of the markets within California through their manufacture,  
18 distribution, promotion, marketing, or sale of their products within California to render  
19 the exercise of jurisdiction by the California courts permissible under traditional notions  
20 of fair play and substantial justice.

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

### 25 BACKGROUND AND PRELIMINARY FACTS

26 14. In 1986, California voters approved an initiative to address growing concerns about  
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
4 from contamination, to allow consumers to make informed choices about the products  
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
6 fit.

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

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

18 17. Proposition 65 provides that any person "violating or threatening to violate" the statute  
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
20 "Threaten to violate" means "to create a condition in which there is a substantial  
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 18. Plaintiff identified certain practices of manufacturers and distributors of Cadmium and  
25 Lead-bearing products of exposing, knowingly and intentionally, persons in California to  
26 the Proposition 65-listed chemicals of such products without first providing clear and  
27 reasonable warnings of such to the exposed persons prior to the time of exposure.

28 Plaintiff later discerned that Defendants engaged in such practice.

1 19. On October 1, 1981, the Governor of California added Cadmium and Cadmium  
2 Compounds to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.*  
3 tit. 27, § 27001(c)). Cadmium is known to the State to cause cancer and developmental,  
4 male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and  
5 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known  
6 to the State to cause cancer and reproductive toxicity, Cadmium became fully subject to  
7 Proposition 65 warning requirements and discharge prohibitions.

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

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

21 **SATISFACTION OF PRIOR NOTICE**

22 22. On or about January 9, 2015, Plaintiff gave notice of alleged violations of Health and  
23 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
24 private action to CTC, TAWA and to the California Attorney General, County District  
25 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
26 people in whose jurisdictions the violations allegedly occurred, concerning the product  
27 Snack Foods containing Cadmium.

1 23. On or about June 22, 2015, Plaintiff gave notice of alleged violations of Health and  
2 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
3 private action to CTC, ORIENTAL, HOA and to the California Attorney General,  
4 County District Attorneys, and City Attorneys for each city containing a population of at  
5 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
6 the product Seaweed containing Lead.

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

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

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

24 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
25 gave notices of the alleged violation to CTC, TAWA, ORIENTAL, HOA and the public  
26 prosecutors referenced in Paragraphs 22 and 23.

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

4 **FIRST CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against CTC, TAWA and DOES 1-**  
6 **20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
7 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

8 **Snack Food**

9 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
10 reference Paragraphs 1 through 28 of this complaint as though fully set forth herein. Each  
11 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
12 promoter, or retailer of Roasted Seaweed, which includes but is not limited to, "Orchids®  
13 ROASTED SEAWEED; For Lunch Box; NET WET. 0.17 OZ(5g) 10SHEETS;  
14 Distributed by ORIENTAL TRADING CO., So San Francisco, CA 94080; PRODUCT  
15 OF KOREA; UPC: 0 74601 00867 3" (collectively referred to as "ROASTED  
16 SEAWEED").

17 30. ROASTED SEAWEED contains Cadmium.

18 31. Defendants knew or should have known that Cadmium have been identified by the State  
19 of California as a chemicals known to cause cancer and reproductive toxicity and  
20 therefore was subject to Proposition 65 warning requirements. Defendants were also  
21 informed of the presence of Cadmium in ROASTED SEAWEED within Plaintiff's notice  
22 of alleged violations further discussed above at Paragraphs 22.

23 32. Plaintiff's allegations regarding ROASTED SEAWEED concerns "[c]onsumer products  
24 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
26 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
27 *25602(b)*. ROASTED SEAWEED is a consumer product, and, as mentioned herein,  
28

1 exposures to Cadmium took place as a result of such normal and foreseeable  
2 consumption and use.

3 33. Plaintiff is informed, believes, and thereon alleges that between January 9, 2012 and the  
4 present, each of the Defendants knowingly and intentionally exposed their California  
5 consumers and users of ROASTED SEAWEED, which Defendants manufactured,  
6 distributed, or sold as mentioned above, to Cadmium and Lead, without first providing  
7 any type of clear and reasonable warning of such to the exposed persons before the time  
8 of exposure. Defendants have distributed and sold ROASTED SEAWEED in California.  
9 Defendants know and intend that California consumers will use and consume ROASTED  
10 SEAWEED, thereby exposing them to Cadmium. Defendants thereby violated  
11 Proposition 65.

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

19 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
20 Proposition 65 as to ROASTED SEAWEED have been ongoing and continuous to the  
21 date of the signing of this complaint, as Defendants engaged and continue to engage in  
22 conduct which violates Health and Safety Code section 25249.6, including the  
23 manufacture, distribution, promotion, and sale of ROASTED SEAWEED, so that a  
24 separate and distinct violation of Proposition 65 occurred each and every time a person  
25 was exposed to Cadmium by ROASTED SEAWEED as mentioned herein.

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



1 37. 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 ROASTED SEAWEED,  
3 pursuant to Health and Safety Code section 25249.7(b).

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

6 **SECOND CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against CTC, ORIENTAL, HOA**  
8 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and**  
9 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

10 **Seaweed**

11 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
12 reference Paragraphs 1 through 38 of this complaint as though fully set forth herein. Each  
13 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
14 promoter, or retailer of Roasted Seaweed, which includes but is not limited to,  
15 "Orchido® Roasted Seaweed, Net Wt. (0.17oz, 5g) 10 Sheets. Distributed by Oriental  
16 Trading Co., 'DOP4150' UPC: 0 74601 00867 3" ("SEAWEED II").

17 40. SEAWEED II contains Lead.

18 41. Defendants knew or should have known that Lead have been identified by the State of  
19 California as a chemicals known to cause cancer and reproductive toxicity and therefore  
20 was subject to Proposition 65 warning requirements. Defendants were also informed of  
21 the presence of Lead in SEAWEED II within Plaintiff's notice of alleged violations  
22 further discussed above at Paragraphs 23.

23 42. Plaintiff's allegations regarding SEAWEED II concerns "[c]onsumer products  
24 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
26 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
27 *25602(b)*. SEAWEED II is a consumer product, and, as mentioned herein, exposures to  
28

1 Cadmium and Lead took place as a result of such normal and foreseeable consumption  
2 and use.

3 43. Plaintiff is informed, believes, and thereon alleges that between June 22, 2012 and the  
4 present, each of the Defendants knowingly and intentionally exposed their California  
5 consumers and users of SEAWEEED II, which Defendants manufactured, distributed, or  
6 sold as mentioned above, to Lead, 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 SEAWEEED II in California. Defendants know and  
9 intend that California consumers will use and consume SEAWEEED II, thereby exposing  
10 them to Lead. Defendants thereby violated Proposition 65.

11 44. The principal routes of exposure are through dermal contact, ingestion and inhalation.

12 Persons sustain exposures by eating and consuming SEAWEEED II, handling SEAWEEED  
13 II without wearing gloves or any other personal protective equipment, or by touching  
14 bare skin or mucous membranes with gloves after handling SEAWEEED II, as well as  
15 through direct and indirect hand to mouth contact, hand to mucous membrane, or  
16 breathing in particulate matter dispersed from SEAWEEED II.

17 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
18 Proposition 65 as to SEAWEEED II have been ongoing and continuous to the date of the  
19 signing of this complaint, as Defendants engaged and continue to engage in conduct  
20 which violates Health and Safety Code section 25249.6, including the manufacture,  
21 distribution, promotion, and sale of SEAWEEED II, so that a separate and distinct  
22 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
23 by SEAWEEED II as mentioned herein.

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

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

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

6  
7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

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

14  
15 Dated: September 4, 2015

YEROUSHALMI & YEROUSHLAMI



16  
17 BY: \_\_\_\_\_

18 Reuben Yeroushalmi  
19 Attorneys for Plaintiff,  
20 Consumer Advocacy Group, Inc.