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7 Consumer Advocacy Group, Inc.

ENDORSED
FILED
Superior Court of California
County of San Francisco
DEC 19 2013
CLERK OF THE COURT
BY: MEREDITH GRIER
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**

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

12 Plaintiff,

13 v.

14 MERCADO LATINO, INC., dba FARAON
15 FOODS CORPORATION, a California
16 Corporation; C & F FOODS, INC., a
17 California Corporation; RHEE BROS., INC.,
18 a Maryland Corporation; KOREAN FARM,
19 INC., a California Corporation; and DOES 1-
20 50;

21 Defendants.

CASE NO. **CGC-13-536301**

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)

BY FAX

22
23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
24 defendants MERCADO LATINO, INC., dba FARAON FOODS CORPORATION, C & F
25 FOODS, INC., RHEE BROS., INC., KOREAN FARM, INC., and DOES 1-20 as follows:

26 //

27 //

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 MERCADO LATINO, INC., dba FARAON FOODS CORPORATION ("MERCADO LATINO") is a California Corporation, doing business in the State of California at all relevant times herein.
3. Defendant C & F FOODS, INC. ("C & F") is a California Corporation, doing business in the State of California at all relevant times herein.
4. Defendant RHEE BROS., INC. ("RHEE BROS") is a Maryland Corporation, doing business in the State of California at all relevant times herein.
5. Defendant KOREAN FARM, INC. ("KOREAN FARM") is a California Corporation, 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 1-50, 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 MERCADO LATINO, C & F, RHEE BROS, KOREAN FARM, and DOES 1-50.
8. 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.
9. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-50, was an agent, servant, or employee of each of the other

1 Defendants. In conducting the activities alleged in this Complaint, each of the
2 Defendants was acting within the course and scope of this agency, service, or
3 employment, and was acting with the consent, permission, and authorization of each of
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint
5 were ratified and approved by every other Defendant or their officers or managing agents.
6 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
7 wrongful conduct of each of the other Defendants.

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

12 JURISDICTION

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

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

26 13. Venue is proper in the County of San Francisco because one or more of the instances of
27 wrongful conduct occurred, and continues to occur, in the County of San Francisco
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1 and/or because Defendants conducted, and continue to conduct, business in the County of
2 San Francisco with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

3 18. Plaintiff identified certain practices of manufacturers and distributors of arsenic [arsenic
4 as used herein refers to arsenic (inorganic arsenic compounds) and arsenic (inorganic
5 oxides)] and lead-bearing products of exposing, knowingly and intentionally, persons in
6 California to the Proposition 65-listed chemicals of such products without first providing
7 clear and reasonable warnings of such to the exposed persons prior to the time of
8 exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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

22 21. On February 27, 1987, the Governor of California added arsenic (inorganic arsenic
23 compounds) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.*
24 tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
25 twenty (20) months after addition of arsenic (inorganic arsenic compounds) to the list of
26 chemicals known to the State to cause cancer, arsenic (inorganic arsenic compounds)
27 became fully subject to Proposition 65 warning requirements and discharge prohibitions.
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1 22. On May 1, 1997, the Governor of California added arsenic (inorganic oxides) to the list
2 of chemicals known to the State to cause reproductive toxicity.(*Cal. Code Regs.* tit. 27, §
3 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty
4 (20) months after addition of arsenic (inorganic oxides) to the list of chemicals known to
5 the State to cause reproductive toxicity, arsenic (inorganic oxides) became fully subject
6 to Proposition 65 warning requirements and discharge prohibitions.

7
8 **SATISFACTION OF PRIOR NOTICE**

9 23. On or about September 10, 2013, Plaintiff gave notice of alleged violations of Health and
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a
11 private action to MERCADO LATINO, and to the California Attorney General, County
12 District Attorneys, and City Attorneys for each city containing a population of at least
13 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
14 products Rice containing lead.

15 24. On or about October 9, 2013, Plaintiff gave notice of alleged violations of Health and
16 Safety Code section 25249.6, concerning consumer products exposures, subject to a
17 private action to MERCADO LATINO, and to the California Attorney General, County
18 District Attorneys, and City Attorneys for each city containing a population of at least
19 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
20 products Rice containing arsenic.

21 25. On or about September 10, 2013, Plaintiff gave notice of alleged violations of Health and
22 Safety Code section 25249.6, concerning consumer products exposures, subject to a
23 private action to C & F, and to the California Attorney General, County District
24 Attorneys, and City Attorneys for each city containing a population of at least 750,000
25 people in whose jurisdictions the violations allegedly occurred, concerning the products
26 Rice containing lead.

- 1 26. On or about October 9, 2013, 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 C & F, and to the California Attorney General, County District
4 Attorneys, and City Attorneys for each city containing a population of at least 750,000
5 people in whose jurisdictions the violations allegedly occurred, concerning the products
6 Rice containing arsenic.
- 7 27. On or about September 10, 2013, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer products exposures, subject to a
9 private action to RHEE BROS, KOREAN FARM, and to the California Attorney
10 General, County District Attorneys, and City Attorneys for each city containing a
11 population of at least 750,000 people in whose jurisdictions the violations allegedly
12 occurred, concerning the products Rice containing lead.
- 13 28. On or about October 9, 2013, Plaintiff gave notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures, subject to a
15 private action to RHEE BROS, KOREAN FARM, and to the California Attorney
16 General, County District Attorneys, and City Attorneys for each city containing a
17 population of at least 750,000 people in whose jurisdictions the violations allegedly
18 occurred, concerning the products Rice containing arsenic.
- 19 29. Before sending the notices of alleged violation, Plaintiff investigated the consumer
20 products involved, the likelihood that such products would cause users to suffer
21 significant exposures to lead and/or arsenic, and the corporate structure of each of the
22 Defendants.
- 23 30. Plaintiff's notices of alleged violation included a Certificate of Merit executed by the
24 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
25 Plaintiff who executed the certificate had consulted with at least one person with relevant
26 and appropriate expertise who reviewed data regarding the exposures to lead and/or
27 arsenic, the subject Proposition 65-listed chemical of this action. Based on that
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1 information, the attorney for Plaintiff who executed the Certificate of Merit believed
2 there was a reasonable and meritorious case for this private action. The attorney for
3 Plaintiff attached to the Certificate of Merit served on the Attorney General the
4 confidential factual information sufficient to establish the basis of the Certificate of
5 Merit.

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

9 32. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notices of the alleged violations to MERCADO LATINO, C & F, RHEE BROS,
11 KOREAN FARM, and the public prosecutors referenced in Paragraphs 23 through 28.

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

15 **FIRST CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against MERCADO LATINO;
17 and DOES 1-50 for Violations of Proposition 65, The Safe Drinking Water and
18 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

19 **Rice**

20 34. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
21 reference paragraphs 1 through 33 of this complaint as though fully set forth herein.

22 35. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Rice, which includes but is not limited to
24 "FARAON® LONG GRAIN 'E-Z COOK™ PARBOILED', 'NET WT. 2 LBS',
25 ENRICHED RICE UPC: 0 74734 39799 6" ("RICE").

26 36. RICE contains lead.

27 37. Defendants knew or should have known that lead has been identified by the State of
28 California as chemicals known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of lead in RICE within Plaintiff's notice of alleged violations further
3 discussed above at Paragraph 23.

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

10 39. Plaintiff is informed, believes, and thereon alleges that between September 10, 2010 and
11 the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of RICE, which Defendants manufactured, distributed, or sold as
13 mentioned above, to lead without first providing any type of clear and reasonable
14 warning of such to the exposed persons before the time of exposure. Defendants have
15 distributed and sold RICE in California. Defendants know and intend that California
16 consumers will use and consume RICE, thereby exposing them to lead. Defendants
17 thereby violated Proposition 65.

18 40. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by eating and consuming RICE, handling RICE without
20 wearing gloves or any other personal protective equipment, or by touching bare skin or
21 mucous membranes with gloves after handling RICE, as well as through direct and
22 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
23 matter dispersed from RICE.

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

3 42. 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 43. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to lead from RICE, pursuant to Health and
8 Safety Code section 25249.7(b).

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

11 **SECOND CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against MERCADO LATINO;
13 and DOES 1-50 for Violations of Proposition 65, The Safe Drinking Water and
14 Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

15 **Rice**

16 45. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 44 of this complaint as though fully set forth herein.

18 46. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Rice, which includes but is not limited to
20 "FARAON® LONG GRAIN 'E-Z COOK™ PARBOILED', 'NET WT. 2 LBS',
21 ENRICHED RICE UPC: 0 74734 39799 6" ("RICE").

22 47. RICE contains arsenic.

23 48. Defendants knew or should have known that arsenic has been identified by the State of
24 California as chemicals known to cause cancer and reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of arsenic in RICE within Plaintiff's notice of alleged violations further
27 discussed above at Paragraph 24.
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1 49. Plaintiff's allegations regarding RICE concern "[c]onsumer products exposure[s]," which
2 "is an exposure that results from a person's acquisition, purchase, storage, consumption,
3 or other reasonably foreseeable use of a consumer good, or any exposure that results from
4 receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. RICE are consumer
5 products, and, as mentioned herein, exposures to lead took place as a result of such
6 normal and foreseeable consumption and use.

7 50. Plaintiff is informed, believes, and thereon alleges that between October 9, 2010 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of RICE, which Defendants manufactured, distributed, or sold as
10 mentioned above, to lead without first providing any type of clear and reasonable
11 warning of such to the exposed persons before the time of exposure. Defendants have
12 distributed and sold RICE in California. Defendants know and intend that California
13 consumers will use and consume RICE, thereby exposing them to arsenic. Defendants
14 thereby violated Proposition 65.

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

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

1 53. 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 54. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to arsenic from RICE, pursuant to Health and
6 Safety Code section 25249.7(b).

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

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11 **THIRD CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against C & F; and DOES 1-50**
13 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
14 **Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.)**

15 **Rice**

16 56. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 55 of this complaint as though fully set forth herein.

18 57. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Rice, which includes but is not limited to "C & F®
20 foods inc. 'Extra Fancy Long Grain', 'ENRICHED RICE', 'NET WT 2 LBS', UPC 0
21 72769 12218 7" ("RICE").

22 58. RICE contains lead.

23 59. Defendants knew or should have known that lead has been identified by the State of
24 California as chemicals known to cause cancer and reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of lead in RICE within Plaintiff's notice of alleged violations further
27 discussed above at Paragraph 25.

28 60. Plaintiff's allegations regarding RICE concern "[c]onsumer products exposure[s]," which
"is an exposure that results from a person's acquisition, purchase, storage, consumption,

1 or other reasonably foreseeable use of a consumer good, or any exposure that results from
2 receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. RICE are consumer
3 products, and, as mentioned herein, exposures to lead took place as a result of such
4 normal and foreseeable consumption and use.

5 61. Plaintiff is informed, believes, and thereon alleges that between September 10, 2010 and
6 the present, each of the Defendants knowingly and intentionally exposed California
7 consumers and users of RICE, which Defendants manufactured, distributed, or sold as
8 mentioned above, to lead without first providing any type of clear and reasonable
9 warning of such to the exposed persons before the time of exposure. Defendants have
10 distributed and sold RICE in California. Defendants know and intend that California
11 consumers will use and consume RICE, thereby exposing them to lead. Defendants
12 thereby violated Proposition 65.

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

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

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

1 65. 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 RICE, pursuant to Health and
3 Safety Code section 25249.7(b).

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

6
7 **FOURTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against C & F; and DOES 1-50**
9 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
10 **Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

11 **Rice**

12 67. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
13 reference paragraphs 1 through 66 of this complaint as though fully set forth herein.

14 68. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Rice, which includes but is not limited to "C & F®
16 foods inc. 'Extra Fancy Long Grain', 'ENRICHED RICE', 'NET WT 2 LBS', UPC 0
17 72769 12218 7" ("RICE").

18 69. RICE contains arsenic.

19 70. Defendants knew or should have known that arsenic has been identified by the State of
20 California as chemicals known to cause cancer and reproductive toxicity and therefore
21 was subject to Proposition 65 warning requirements. Defendants were also informed of
22 the presence of arsenic in RICE within Plaintiff's notice of alleged violations further
23 discussed above at Paragraph 26.

24 71. Plaintiff's allegations regarding RICE concern "[c]onsumer products exposure[s]," which
25 "is an exposure that results from a person's acquisition, purchase, storage, consumption,
26 or other reasonably foreseeable use of a consumer good, or any exposure that results from
27 receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. RICE are consumer
28 products, and, as mentioned herein, exposures to arsenic took place as a result of such
normal and foreseeable consumption and use.

1 72. Plaintiff is informed, believes, and thereon alleges that between October 9, 2010 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of RICE, which Defendants manufactured, distributed, or sold as
4 mentioned above, to arsenic without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold RICE in California. Defendants know and intend that California
7 consumers will use and consume RICE, thereby exposing them to arsenic. Defendants
8 thereby violated Proposition 65.

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

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

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

25 76. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to arsenic from RICE, pursuant to Health and
27 Safety Code section 25249.7(b).
28

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

3
4 **FIFTH CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against RHEE BROS,**
6 **KOREAN FARM; and DOES 1-50 for Violations of Proposition 65, The Safe**
7 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
8 **25249.5, *et seq.*))**

9 **Rice**

10 78. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
11 reference paragraphs 1 through 77 of this complaint as though fully set forth herein.

12 79. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
13 distributor, promoter, or retailer of Rice, which includes but is not limited to 1) "HAN
14 KUK MI, NUTRA-GRAIN RICE, Net Wt. 5 lb, UPC 0 81652 00061 7", 2) "YISSINE™
15 MIXED GRAIN, Net Wt. 3 lb. UPC: 0 81652 00087 7", 3) "THREE ELEPHANTS
16 BRAND THAI SWEET RICE 'NEW CROP. AAA GRADE', 'EXTRA SUPER
17 QUALITY', MALAGKIT, Net Wt. 5 lbs., UPC: 0 81652 01020 3" ("RICE").

18 80. RICE contains lead.

19 81. Defendants knew or should have known that lead has been identified by the State of
20 California as a chemical known to cause cancer and reproductive toxicity and therefore
21 was subject to Proposition 65 warning requirements. Defendants were also informed of
22 the presence of lead in RICE within Plaintiff's notice of alleged violations further
23 discussed above at Paragraph 27.

24 82. Plaintiff's allegations regarding RICE concern "[c]onsumer products exposure[s]," which
25 "is an exposure that results from a person's acquisition, purchase, storage, consumption,
26 or other reasonably foreseeable use of a consumer good, or any exposure that results from
27 receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. RICE are consumer
28

1 products, and, as mentioned herein, exposures to lead took place as a result of such
2 normal and foreseeable consumption and use.

3 83. Plaintiff is informed, believes, and thereon alleges that between September 10, 2010 and
4 the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of RICE, which Defendants manufactured, distributed, or sold as
6 mentioned above, to lead without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold RICE in California. Defendants know and intend that California
9 consumers will use and consume RICE, thereby exposing them to lead. Defendants
10 thereby violated Proposition 65.

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

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

23 86. 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 87. 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 RICE, pursuant to Health and
3 Safety Code section 25249.7(b).

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

6
7 **SIXTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against RHEE BROS,**
9 **KOREAN FARM; and DOES 1-50 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 **Rice**

13 89. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
14 reference paragraphs 1 through 88 of this complaint as though fully set forth herein.

15 90. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Rice, which includes but is not limited to
17 “YISSINE™ MIXED GRAIN, Net Wt. 3 lb. UPC: 0 81652 00087 7” (“RICE”).

18 91. RICE contains arsenic.

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

24 93. Plaintiff's allegations regarding RICE concern “[c]onsumer products exposure[s],” which
25 “is an exposure that results from a person's acquisition, purchase, storage, consumption,
26 or other reasonably foreseeable use of a consumer good, or any exposure that results from
27 receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. RICE are consumer
28 products, and, as mentioned herein, exposures to arsenic took place as a result of such
normal and foreseeable consumption and use.

1 94. Plaintiff is informed, believes, and thereon alleges that between October 9, 2010 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of RICE, which Defendants manufactured, distributed, or sold as
4 mentioned above, to arsenic without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold RICE in California. Defendants know and intend that California
7 consumers will use and consume RICE, thereby exposing them to arsenic. Defendants
8 thereby violated Proposition 65.

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

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

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

24 98. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to arsenic from RICE, pursuant to Health and
26 Safety Code section 25249.7(b).

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

3
4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

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

11
12 Dated: ~~December~~ 19, 2013

YEROUSHALMI & ASSOCIATES

13
14 BY: 

15 Reuben Yeroushalmi
16 Attorneys for Plaintiff,
17 Consumer Advocacy Group, Inc.
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