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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 18 2014

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 **BC 549137**

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

16 Plaintiff,

17 v.

18 HONG KONG SUPERMARKET, INC., a
19 California Corporation; HONG KONG
20 SUPERMARKET OF MONTEREY PARK,
21 LTD., a California Corporation; and DOES
22 1-20;

23 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)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
25 defendants HONG KONG SUPERMARKET, INC., HONG KONG SUPERMARKET OF
26 MONTEREY PARK, LTD., and DOES 1-20 as follows:

27 **THE PARTIES**

28 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

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

3 2. Defendant HONG KONG SUPERMARKET, INC. ("HONG KONG") is a California
4 corporation, doing business in the State of California at all relevant times herein.

5 3. Defendant HONG KONG SUPERMARKET OF MONTEREY PARK, LTD. ("HONG
6 KONG MONTEREY") is a California corporation, doing business in the State of
7 California at all relevant times herein.

8 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
9 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
10 complaint to allege their true names and capacities when ascertained. Plaintiff is
11 informed, believes, and thereon alleges that each fictitiously named defendant is
12 responsible in some manner for the occurrences herein alleged and the damages caused
13 thereby.

14 5. At all times mentioned herein, the term "Defendants" includes HONG KONG, HONG
15 KONG MONTEREY, and DOES 1-20.

16 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
17 times mentioned herein have conducted business within the State of California.

18 7. At all times relevant to this action, each of the Defendants, including DOES 1-20, was an
19 agent, servant, or employee of each of the other Defendants. In conducting the activities
20 alleged in this Complaint, each of the Defendants was acting within the course and scope
21 of this agency, service, or employment, and was acting with the consent, permission, and
22 authorization of each of the other Defendants. All actions of each of the Defendants
23 alleged in this Complaint were ratified and approved by every other Defendant or their
24 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
25 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

26 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
27 Defendants was a person doing business within the meaning of Health and Safety Code
28

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
2 employees at all relevant times.

3 **JURISDICTION**

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

21 **BACKGROUND AND PRELIMINARY FACTS**

- 22 12. In 1986, California voters approved an initiative to address growing concerns about
23 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
24 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
25 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
26 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
27 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
28

1 from contamination, to allow consumers to make informed choices about the products
2 they buy, and to enable persons to protect themselves from toxic chemicals as they see
3 fit.

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

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

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

21 16. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
22 products of exposing, knowingly and intentionally, persons in California to the
23 Proposition 65-listed chemicals of such products without first providing clear and
24 reasonable warnings of such to the exposed persons prior to the time of exposure.
25 Plaintiff later discerned that Defendants engaged in such practice.

26 17. On February 27, 1987, the Governor of California added lead to the list of chemicals
27 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).
28

1 lead is known to the State to cause developmental, female, and male reproductive
2 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
3 months after addition of lead to the list of chemicals known to the State to cause
4 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
5 and discharge prohibitions.

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

12 **SATISFACTION OF PRIOR NOTICE**

13 19. On or about March 27, 2014, 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 HONG KONG, HONG KONG MONTEREY, and to the California
16 Attorney General, County District Attorneys, and City Attorneys for each city containing
17 a population of at least 750,000 people in whose jurisdictions the violations allegedly
18 occurred, concerning the product Rice.

19 20. 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 the corporate structure of each of the Defendants.

22 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
23 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
24 Plaintiff who executed the certificate had consulted with at least one person with relevant
25 and appropriate expertise who reviewed data regarding the exposures to lead, the subject
26 Proposition 65-listed chemical of this action. Based on that information, the attorney for
27 Plaintiff who executed the Certificate of Merit believed there was a reasonable and
28

1 meritorious case for this private action. The attorney for Plaintiff attached to the
2 Certificate of Merit served on the Attorney General the confidential factual information
3 sufficient to establish the basis of the Certificate of Merit.

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

7 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
8 gave notices of the alleged violations to HONG KONG, HONG KONG MONTEREY,
9 and the public prosecutors referenced in Paragraph 19.

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

13 **FIRST CAUSE OF ACTION**

14 **(By CONSUMER ADVOCACY GROUP, INC. and against HONG KONG, HONG**
15 **KONG MONTEREY, and DOES 1-20 for Violations of Proposition 65, The Safe**
16 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
17 **25249.5, *et seq.*))**

18 **Rice**

19 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.

21 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Big Green Organic Black Rice ("RICE") which
23 includes but is not limited to: "Big Green Organic Black Rice, Net Weight: 16oz, "USDA
24 ORGANIC", "NOP Organic Certified by ECOCERT SA", "Product of China",
25 Distributed By: Big Green (USA) Inc., barcode: 6 78452 14054 6".

26 27. Plaintiff is informed, believes, and thereon alleges that RICE contains lead.

27 28. Defendants knew or should have known that lead has been identified by the State of
28 California as a chemical 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 19.

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

10 30. Plaintiff is informed, believes, and thereon alleges that between March 27, 2011 and the
11 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 31. 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 32. 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,
28

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 33. 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 34. 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 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

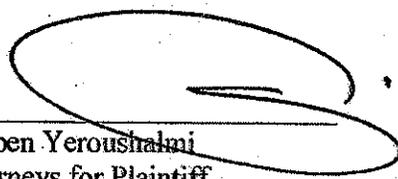
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12 **PRAYER FOR RELIEF**

13
14 Plaintiff demands against each of the Defendants as follows:

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

20
21
22 Dated: June 18, 2014

YEROUSHALMI & ASSOCIATES

23
24
25 BY: 

26 Reuben Yeroushalmi
27 Attorneys for Plaintiff,
28 Consumer Advocacy Group, Inc.