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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 05 2015

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 STATER BROS. MARKETS,
19 a California Corporation; STATER BROS.
20 HOLDINGS INC., a Delaware Corporation;
21 LA CADENA INVESTMENTS, a California
22 General Partnership and DOES 1-20;

23 Defendants.

CASE NO. **BC 571487**

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 STATER BROS. MARKETS, STATER BROS. HOLDINGS INC., LA CADENA
26 INVESTMENTS 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 STATER BROS. MARKETS (STATER BROS.), is a California corporation
4 doing business in the State of California at all relevant times herein.
- 5 3. Defendant STATER BROS. HOLDINGS INC. (STATER HOLDINGS), is a Delaware
6 corporation doing business in the State of California at all relative times herein.
- 7 4. Defendant LA CADENA INVESTMENTS (LA CADENA), is a California general
8 partnership doing business in the State of California at all relative times herein.
- 9 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
11 complaint to allege their true names and capacities when ascertained. Plaintiff is
12 informed, believes, and thereon alleges that each fictitiously named defendant is
13 responsible in some manner for the occurrences herein alleged and the damages caused
14 thereby.
- 15 6. At all times mentioned herein, the term "Defendants" includes STATER BROS.,
16 STATER HOLDINGS, LA CADENA and DOES 1-20.
- 17 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
18 times mentioned herein have conducted business within the State of California.
- 19 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
20 including DOES 1-20, was an agent, servant, or employee of each of the other
21 Defendants. In conducting the activities alleged in this Complaint, each of the
22 Defendants was acting within the course and scope of this agency, service, or
23 employment, and was acting with the consent, permission, and authorization of each of
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint
25 were ratified and approved by every other Defendant or their officers or managing agents.
26 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
27 wrongful conduct of each of the other Defendants.

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

5 JURISDICTION

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

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

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

23 BACKGROUND AND PRELIMINARY FACTS

24 13. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
2 from contamination, to allow consumers to make informed choices about the products
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see
4 fit.

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

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

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

22 17. On February 27, 1987, the Governor of California added lead to the list of chemicals
23 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
24 lead is known to the State to cause developmental, female, and male reproductive
25 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
26 months after addition of lead to the list of chemicals known to the State to cause
27 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
28 and discharge prohibitions.

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

7 19. Plaintiff identified certain practices of manufacturers and distributors of lead and lead
8 compounds ("LEAD"), and arsenic (inorganic arsenic compounds) and arsenic (inorganic
9 oxides) ("ARSENIC") bearing products of exposing, knowingly and intentionally,
10 persons in California to the Proposition 65-listed chemicals of such products without first
11 providing clear and reasonable warnings of such to the exposed persons prior to the time
12 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

13 20. On February 27, 1987, the Governor of California added arsenic (inorganic arsenic
14 compounds) to the list of chemicals known to the State to cause cancer (Cal. Code Regs.
15 tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
16 twenty (20) months after addition of arsenic (inorganic arsenic compounds) to the list of
17 chemicals known to the State to cause cancer, arsenic (inorganic arsenic compounds)
18 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

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

25 **SATISFACTION OF PRIOR NOTICE**

26 22. On or about June 5, 2014 Plaintiff gave notice of alleged violations of Health and Safety
27 Code section 25249.6, concerning consumer products exposures subject to a private
28 action to STATER BROS., STATER HOLDINGS, LA CADENA and to the California

1 Attorney General, County District Attorneys, and City Attorneys for each city containing
2 a population of at least 750,000 people in whose jurisdictions the violations allegedly
3 occurred, concerning the product Rice, containing LEAD.

4 23. On or about August 8, 2014 Plaintiff gave notice of alleged violations of Health and
5 Safety Code section 25249.6, concerning consumer products exposure subject to a private
6 action to STATER BROS., STATER HOLDINGS, LA CADENA and to the California
7 Attorney General, County District Attorneys, and City Attorneys for each city containing
8 a population of at least 750,000 people in whose jurisdictions the violations allegedly
9 occurred, concerning the product Rice, containing ARSENIC.

10 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer
11 products involved, the likelihood that such products would cause users to suffer
12 significant exposures to LEAD and ARSENIC and the corporate structure of each of the
13 Defendants.

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

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

1 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violation STATER BROS., STATER HOLDINGS, LA
3 CADENA and the public prosecutors referenced in Paragraph 22-23.

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

7 **FIRST CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against STATER BROS. MARKETS,**
9 **STATER BROS. HOLDINGS INC., LA CADENA INVESTMENTS and DOES 1-20 for**
10 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
11 **(Health & Safety Code, §§ 25249.5, et seq.))**

12 **Rice**

13 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
14 reference paragraphs 1 through 28 of this complaint as though fully set forth herein. Each
15 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
16 promoter, or retailer of Rice, which includes but is not limited to STATER BROS.®
17 Since 1936, "ENRICHED LONG GRAIN RICE", "A NATURALLY FAT FREE
18 SODIUM FREE FOOD", "NET WT 16 OZ (1 LB) 452 g", Barcode: "0 74175 31110 0"
19 ("RICE").

20 30. RICE contains LEAD.

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

26 32. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
27 reference paragraphs 1 through 31 of this complaint as though fully set forth herein. Each
28 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
promoter, or retailer of Rice, which includes but is not limited to STATER BROS.®

1 Since 1936, "ENRICHED LONG GRAIN BROWN RICE", "A NATURALLY FAT
2 FREE SODIUM FREE FOOD", (NEW WT 32 OZ 2LB 907g) '©STATER BROS.
3 MARKETS TBC1204' UPC: 0 74175 31100 1" ("RICE").

4 33. RICE contains ARSENIC.

5 34. Defendants knew or should have known that ARSENIC has been identified by the State
6 of California as a chemical known to cause cancer and reproductive toxicity and therefore
7 was subject to Proposition 65 warning requirements. Defendants were also informed of
8 the presence of ARSENIC in RICE within Plaintiff's notice of alleged violations further
9 discussed above at Paragraph 23.

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

16 36. Plaintiff is informed, believes, and thereon alleges that between June 5, 2011 and the
17 present, each of the Defendants knowingly and intentionally exposed their employees,
18 California consumers of RICE, which Defendants manufactured, distributed, or sold as
19 mentioned above, to LEAD without first providing any type of clear and reasonable
20 warning of such to the exposed persons before the time of exposure. Defendants have
21 distributed and sold RICE in California. Defendants know and intend that California
22 consumers will use and consume RICE, thereby exposing them to LEAD and ARSENIC.
23 Defendants thereby violated Proposition 65.

24 37. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by eating and consuming RICE, handling RICE without
26 wearing gloves or any other personal protective equipment, or by touching bare skin or
27 mucous membranes with gloves after handling RICE, as well as through direct and
28

1 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
2 matter dispersed from RICE.

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

9 39. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
10 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
11 violations alleged herein will continue to occur into the future.

12 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to lead from RICE, pursuant to Health and
14 Safety Code section 25249.7(b).

15 41. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
16 filing this Complaint.

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1 PRAYER FOR RELIEF

2 Plaintiff demands against each of the Defendants as follows:

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

8

9 Dated: February 5, 2015

YEROUSHALMI & YEROUSHLAMI

10 

11 BY: _____

12 Reuben Yeroushalmi
13 Attorneys for Plaintiff,
14 Consumer Advocacy Group, Inc.