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**ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**MAR 17 2015**

Sherri R. Carter, Executive Officer/Clerk  
By Myrna Beltran, 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 BODEGA LATINA CORPORATION, a  
19 Delaware Corporation; GRUPO  
20 COMERCIAL CHEDRAUI, S.A. DE C.V., a  
21 Mexico Corporation; PRODUCTORA Y  
22 COMERCIALIZADORA DE PRODUCTOS  
23 S.A. DE C.V., a Mexico Corporation; and  
24 DOES 1-20;

25 Defendants.

CASE NO.

**BC 5 7 5 8 1 1**

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)

26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
27 Defendants and BODEGA LATINA CORPORATION, GRUPO COMERCIAL CHEDRAUI,  
28 S.A. DE C.V., PRODUCTORA Y COMERCIALIZADORA DE PRODUCTOS S.A. DE C.V.  
and DOES 1-20 as follows:

1 THE PARTIES

- 2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
3 organization qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant BODEGA LATINA CORPORATION ("BODEGA LATINA"), is a Delaware  
8 corporation doing business in the State of California at all relevant times herein.
- 9 3. Defendant GRUPO COMERCIAL CHEDRAUI, S.A. DE C.V. ("CHEDRAUI"), is a  
10 Mexico corporation doing business in the State of California at all relative times herein.
- 11 4. Defendant PRODUCTORA Y COMERCIALIZADORA DE PRODUCTOS S.A. DE  
12 C.V. ("PRODUCTORA"), is a Mexico corporation doing business in the State of  
13 California at all relative times herein.
- 14 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
15 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
16 complaint to allege their true names and capacities when ascertained. Plaintiff is  
17 informed, believes, and thereon alleges that each fictitiously named defendant is  
18 responsible in some manner for the occurrences herein alleged and the damages caused  
19 thereby.
- 20 6. At all times mentioned herein, the term "Defendants" includes BODEGA LATINA,  
21 CHEDRAUI, PRODUCTORA and DOES 1-20.
- 22 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
23 times mentioned herein have conducted business within the State of California.
- 24 8. Upon information and belief, at all times relevant to this action, each of the Defendants,  
25 including DOES 1-20, was an agent, servant, or employee of each of the other  
26 Defendants. In conducting the activities alleged in this Complaint, each of the  
27 Defendants was acting within the course and scope of this agency, service, or  
28 employment, and was acting with the consent, permission, and authorization of each of

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
2 were ratified and approved by every other Defendant or their officers or managing agents.  
3 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
4 wrongful conduct of each of the other Defendants.

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

9 **JURISDICTION**

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

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

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

BACKGROUND AND PRELIMINARY FACTS

1  
2 13. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
8 from contamination, to allow consumers to make informed choices about the products  
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
10 fit.

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

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

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



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

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

14 19. Plaintiff identified certain practices of manufacturers and distributors of lead and lead  
15 compounds (“LEAD”)-bearing products of exposing, knowingly and intentionally,  
16 persons in California to the Proposition 65-listed chemicals of such products without first  
17 providing clear and reasonable warnings of such to the exposed persons prior to the time  
18 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

19  
20 **SATISFACTION OF PRIOR NOTICE**

21 20. On or about September 5, 2014 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 BODEGA LATINA, CHEDRAUI, PRODUCTORA and to the  
24 California Attorney General, County District Attorneys, and City Attorneys for each city  
25 containing a population of at least 750,000 people in whose jurisdictions the violations  
26 allegedly occurred, concerning the product Caramel Coating, containing LEAD.

- 1 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to LEAD and the corporate structure of each of the Defendants.
- 4 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
6 Plaintiff who executed the certificate had consulted with at least one person with relevant  
7 and appropriate expertise who reviewed data regarding the exposures to LEAD, the  
8 subject Proposition 65-listed chemicals of this action. Based on that information, the  
9 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
10 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
11 to the Certificate of Merit served on the Attorney General the confidential factual  
12 information sufficient to establish the basis of the Certificate of Merit.
- 13 23. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
14 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
15 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 16 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notices of the alleged violation to BODEGA LATINA, CHEDRAUI,  
18 PRODUCTORA and the public prosecutors referenced in Paragraphs 20.
- 19 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
20 any applicable district attorney or city attorney has commenced and is diligently  
21 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against BODEGA LATINA  
3 CORPORATION, GRUPO COMERCIAL CHEDRAUI, S.A. DE C.V., PRODUCTORA Y  
4 COMERCIALIZADORA DE PRODUCTOS S.A. DE C.V. and DOES 1-20 for Violations  
5 of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*  
6 *Safety Code, §§ 25249.5, et seq.*))

7 **Caramel Coating**

8 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
9 reference paragraphs 1 through 25 of this complaint as though fully set forth herein. Each  
10 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
11 promoter, or retailer of Caramel Coating, which includes but is not limited to “Forritos®  
12 Zumba Pica® CAMEL COATING FOR APPLES ARTIFICIAL TAMARIND  
13 FLAVORED; NET WT. 12.8 OZ(0.8Lb)365g; Forritos® CUBRE MANZANAS; MADE  
14 BY: PRODUCTORA Y COMERCIALIZADORA DE PRODUCTOS S.A. DE C.V.  
15 CALLE ZEUS No. 1105 PARQUE INDUSTRIAL KALOS DEL PONIENTE, SANTA  
16 CATARINA, N.L. MÉXCO, C.P. 66370; Barcode: 7 03885 06312 1” (“COATING”).

17 27. COATING contains LEAD.

18 28. Defendants knew or should have known that LEAD has been identified by the State of  
19 California as a chemical 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 COATING within Plaintiff's notice of alleged violations further  
22 discussed above at Paragraph 20.

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

30. Plaintiff is informed, believes, and thereon alleges that between September 5, 2011, and  
the present, each of the Defendants knowingly and intentionally exposed California



1 consumers of COATING, which Defendants ~~manufactured~~, distributed, or sold as  
2 mentioned above, to LEAD without first providing any type of clear and reasonable  
3 warning of such to the exposed persons before the time of exposure. Defendants have  
4 distributed and sold COATING in California. Defendants know and intend that  
5 California consumers will use and consume COATING, thereby exposing them to  
6 LEAD. Defendants thereby violated Proposition 65.

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

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

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

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

26 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
27 filing this Complaint.  
28



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.

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9 Dated: March 17, 2015

YEROUSHALMI & YEROUSHLAMI

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11 BY: 

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

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