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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAR 08 2016

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

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

13 **COUNTY OF LOS ANGELES**

BC 6 18 06 9

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

16 Plaintiff,

17 v.

18 DEL MAR SUPERMARKET, a business  
19 entity form unknown; and DOES 1-20;

20 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)

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 Defendants DEL MAR SUPERMARKET, and DOES 1-20 as follows:

23 **THE PARTIES**

- 24 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
25 organization qualified to do business in the State of California. CAG is a person within  
26 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
27 as a private attorney general, brings this action in the public interest as defined under  
28 Health and Safety Code section 25249.7, subdivision (d).



1 those given by statute to other trial courts. This Court has jurisdiction over this action  
2 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
3 violations of Proposition 65 in any Court of competent jurisdiction.

- 4 9. This Court has jurisdiction over Defendants named herein because Defendants either  
5 reside or are located in this State or are foreign corporations authorized to do business in  
6 California, are registered with the California Secretary of State, or who do sufficient  
7 business in California, have sufficient minimum contacts with California, or otherwise  
8 intentionally avail themselves of the markets within California through their  
9 manufacture, distribution, promotion, marketing, or sale of their products within  
10 California to render the exercise of jurisdiction by the California courts permissible  
11 under traditional notions of fair play and substantial justice.
- 12 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
13 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
14 because Defendants conducted, and continue to conduct, business in the County of Los  
15 Angeles with respect to the consumer product that is the subject of this action.

16 **BACKGROUND AND PRELIMINARY FACTS**

- 17 11. In 1986, California voters approved an initiative to address growing concerns about  
18 exposure to toxic chemicals and declared their right "[t]o be informed about exposures  
19 to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
20 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
21 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
22 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
23 from contamination, to allow consumers to make informed choices about the products  
24 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
25 fit.
- 26 12. Proposition 65 requires the Governor of California to publish a list of chemicals known  
27 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
28 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains

1 over 700 chemicals and chemical families. Proposition 65 imposes warning  
2 requirements and other controls that apply to Proposition 65-listed chemicals.

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

9 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
11 25249.7. "Threaten to violate" means "to create a condition in which there is a  
12 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
13 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
14 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

20 16. On February 27, 1987 the Governor of California added Lead to the list of chemicals  
21 known to the State to cause developmental and reproductive toxicity, and on October 1,  
22 1992, the Governor added Lead and Lead Compounds to the list of chemicals known to  
23 the State to cause cancer. Pursuant to Health and Safety Code sections 25249.9 and  
24 25249.10, twenty (20) months after addition of LEAD to the list of chemicals known to  
25 the State to cause cancer and reproductive toxicity, LEAD became fully subject to  
26 Proposition 65 warning requirements and discharge prohibitions.

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SATISFACTION OF PRIOR NOTICE

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17. On or about May 5, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to DEL MAR SUPERMARKET, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning Dry Ginger Powder containing LEAD.
  18. On or about August 5, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to DEL MAR SUPERMARKET and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning Ground Cinnamon containing LEAD.
  19. On or about October 08, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to DEL MAR SUPERMARKET and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning Dried Ground Shrimp containing LEAD.
  20. On or about October 14, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to DEL MAR SUPERMARKET, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning Sesame Seeds containing LEAD.
  21. On or about November 19, 2015, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to DEL MAR SUPERMARKET, and to the California Attorney General,

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

4 22. On or about December 23, 2015, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
6 private action to DEL MAR SUPERMARKET, and to the California Attorney General,  
7 County District Attorneys, and City Attorneys for each city containing a population of at  
8 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
9 Roasted Seaweed containing LEAD.

10 23. 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 the corporate structure of each of the Defendants.

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

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

25 26. Plaintiff is commencing this action more than sixty (60) days from the dates that  
26 Plaintiff gave notices of the alleged violation to DEL MAR SUPERMARKET, and the  
27 public prosecutors referenced in Paragraphs 17 through 22.  
28

1 27. 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 DEL MAR SUPERMARKET.  
6 and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic  
7 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

8 **Dry Ginger Powder**

9 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
10 reference paragraphs 1 through 27 of this complaint as though fully set forth herein.  
11 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
12 distributor, promoter, or retailer of Dry Ginger Powder, which includes but is not limited  
13 to, WU HSING DRY GINGER POWDER; NET WT: 30g, 1.1oz; INGREDIENTS:  
14 DRY GINGER; PACKED FOR TON HSING FOODS INDUSTRIAL CO., LTD.;  
15 OFFICE: 4F, NO. 108 RUEY GUANG RD. NEIHU DIST. TAIPEI TAIWAN R.O.C.;  
16 MADE IN TAIWAN; UPC: 4 710868 801171 ("GINGER POWDER").

17 29. GINGER POWDER contains LEAD.

18 30. 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 GINGER POWDER within Plaintiff's notice of alleged  
22 violations further discussed above at Paragraph 17.

23 31. Plaintiff's allegations regarding GINGER POWDER 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)*. GINGER POWDER is a consumer product, and, as mentioned herein,  
28 exposures to LEAD took place as a result of such normal and foreseeable use.

1 32. Plaintiff is informed, believes, and thereon alleges that between August 5, 2012 and the  
2 present, each of the Defendants knowingly and intentionally exposed California  
3 consumers of GROUND CINNAMON, which Defendants manufactured, distributed, or  
4 sold as mentioned above, to LEAD without first providing any type of clear and  
5 reasonable warning of such to the exposed persons before the time of exposure.  
6 Defendants have distributed and sold GROUND CINNAMON in California.  
7 Defendants know and intend that California consumers will use and consume GROUND  
8 CINNAMON, thereby exposing them to LEAD. Defendants thereby violated  
9 Proposition 65.

10 33. The principal routes of exposure were through ingestion, including hand to mouth  
11 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
12 eating and consuming GINGER POWDER, handling GINGER POWDER without  
13 wearing gloves or by touching bare skin or mucus membranes with gloves after handling  
14 GINGER POWDER, or through direct and indirect hand to mouth contact, hand to food  
15 to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing  
16 in particulate matter emanating from GINGER POWDER, as well as through  
17 environmental mediums that carry the LEAD once contained within the GINGER  
18 POWDER.

19 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
20 Proposition 65 as to GINGER POWDER have been ongoing and continuous to the date  
21 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 GINGER POWDER, so that a separate  
24 and distinct violation of Proposition 65 occurred each and every time a person was  
25 exposed to LEAD by GINGER POWDER as mentioned herein.

26 35. 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 36. 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 GINGER POWDER, pursuant  
3 to Health and Safety Code section 25249.7(b).

4 37. 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 DEL MAR SUPERMARKET.**  
8 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
9 **Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

10 **Ground Cinnamon**

11 38. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
12 reference paragraphs 1 through 37 of this complaint as though fully set forth herein.  
13 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
14 distributor, promoter, or retailer of Ground Cinnamon, which includes but is not limited  
15 to, "La Mexicana Spice, Canela Molida 'Ground Cinnamon' 99 ¢ (Net Wt 1.5oz,  
16 42.52g) Packed and Distributed by La Mexicana Spice, www.LeMexicanaSpice.com.  
17 UPC: 7 05571 11310 3" ("GROUND CINNAMON").

18 39. GROUND CINNAMON contains LEAD.

19 40. 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 GROUND CINNAMON within Plaintiff's notice of alleged  
23 violations further discussed above at Paragraph 18.

24 41. Plaintiff's allegations regarding GROUND CINNAMON concerns "[c]onsumer  
25 products exposure[s]," which "is an exposure that results from a person's acquisition,  
26 purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
27 good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.*

1 tit. 27, § 25602(b). GROUND CINNAMON is a consumer product, and, as mentioned  
2 herein, exposures to LEAD took place as a result of such normal and foreseeable use.

3 42. Plaintiff is informed, believes, and thereon alleges that between August 5, 2012 and the  
4 present, each of the Defendants knowingly and intentionally exposed California  
5 consumers of GROUND CINNAMON, 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 GROUND CINNAMON in California.  
9 Defendants know and intend that California consumers will use and consume GROUND  
10 CINNAMON, thereby exposing them to LEAD. Defendants thereby violated  
11 Proposition 65.

12 43. The principal routes of exposure were through ingestion, including hand to mouth  
13 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
14 eating and consuming GROUND CINNAMON, handling GROUND CINNAMON  
15 without wearing gloves or by touching bare skin or mucus membranes with gloves after  
16 handling GROUND CINNAMON, or through direct and indirect hand to mouth contact,  
17 hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane,  
18 or breathing in particulate matter emanating from GROUND CINNAMON, as well as  
19 through environmental mediums that carry the LEAD once contained within the  
20 GROUND CINNAMON.

21 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
22 Proposition 65 as to GROUND CINNAMON have been ongoing and continuous to the  
23 date of the signing of this complaint, as Defendants engaged and continue to engage in  
24 conduct which violates Health and Safety Code section 25249.6, including the  
25 manufacture, distribution, promotion, and sale of GROUND CINNAMON, so that a  
26 separate and distinct violation of Proposition 65 occurred each and every time a person  
27 was exposed to LEAD by GROUND CINNAMON as mentioned herein.  
28

1 45. 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 46. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to LEAD from GROUND CINNAMON,  
6 pursuant to Health and Safety Code section 25249.7(b).

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

9 **THIRD CAUSE OF ACTION**

10 (By CONSUMER ADVOCACY GROUP, INC. and against DEL MAR SUPERMARKET.  
11 and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic  
12 Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

13 **Dried Ground Shrimp**

14 48. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 47 of this complaint as though fully set forth herein.  
16 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Dried Ground Shrimp, which includes but is not  
18 limited to, "Ranchero Camaron Molido 'Ground Shrimp' \$1.99. Net Wt. 2 oz. (56.6g)  
19 P525600, Distributed by Ranchero Latin Foods, Los Angeles, Ca, 90023. UPC 7 48397  
20 10007 0" ("SHRIMP").

21 49. SHRIMP contains LEAD.

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

27 51. Plaintiff's allegations regarding SHRIMP concerns "[c]onsumer products exposure[s],"  
28 which "is an exposure that results from a person's acquisition, purchase, storage,

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

5 52. Plaintiff is informed, believes, and thereon alleges that between October 8, 2012 and the  
6 present, each of the Defendants knowingly and intentionally exposed California  
7 consumers of SHRIMP, 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 SHRIMP in California. Defendants know and intend that California  
11 consumers will use and consume SHRIMP, thereby exposing them to LEAD.  
12 Defendants thereby violated Proposition 65.

13 53. The principal routes of exposure were through ingestion, including hand to mouth  
14 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
15 eating and consuming SHRIMP, handling SHRIMP without wearing gloves or by  
16 touching bare skin or mucus membranes with gloves after handling SHRIMP, or through  
17 direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food  
18 then to mouth, hand to mucous membrane, or breathing in particulate matter emanating  
19 from SHRIMP, as well as through environmental mediums that carry the LEAD once  
20 contained within the SHRIMP.

21 54. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of  
22 Proposition 65 as to SHRIMP have been ongoing and continuous to the date of the  
23 signing of this complaint, as Defendants engaged and continue to engage in conduct  
24 which violates Health and Safety Code section 25249.6, including the manufacture,  
25 distribution, promotion, and sale of SHRIMP, so that a separate and distinct violation of  
26 Proposition 65 occurred each and every time a person was exposed to LEAD by  
27 SHRIMP as mentioned herein.  
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1 55. 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 56. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to LEAD from SHRIMP, pursuant to Health  
6 and Safety Code section 25249.7(b).

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

9 **FOURTH CAUSE OF ACTION**

10 **(By CONSUMER ADVOCACY GROUP, INC. and against DEL MAR SUPERMARKET.**  
11 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
12 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

13 **Sesame Seeds**

14 58. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 57 of this complaint as though fully set forth herein.  
16 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Sesame Seeds, which includes but is not limited to,  
18 "1st OF Sesame Seeds (Black), Mé Den; Packed for: Oriental FoodBank, Inc.; Net Wt.:  
19 8oz (226 G.); Packin USA; UPC #: 0 49884 70005 7. ("SESAME").

20 59. SESAME contains LEAD.

21 60. 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 SESAME within Plaintiff's notice of alleged violations further  
25 discussed above at Paragraph 20.

26 61. Plaintiff is informed, believes, and thereon alleges that between October 14, 2012 and  
27 the present, each of the Defendants knowingly and intentionally exposed California  
28 consumers of SESAME, which Defendants manufactured, distributed, or sold as

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

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

12 63. The principal routes of exposure were through ingestion, including hand to mouth  
13 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
14 eating and consuming SESAME, handling SESAME without wearing gloves or by  
15 touching bare skin or mucus membranes with gloves after handling SESAME, or  
16 through direct and indirect hand to mouth contact, hand to food to mouth, direct contact  
17 to food then to mouth, hand to mucous membrane, or breathing in particulate matter  
18 emanating from SESAME, as well as through environmental mediums that carry the  
19 LEAD once contained within the SESAME.

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

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1 65. 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 66. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to LEAD from SESAME, pursuant to Health  
6 and Safety Code section 25249.7(b).

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

9 **FIFTH CAUSE OF ACTION**

10 **(By CONSUMER ADVOCACY GROUP, INC. and against DEL MAR SUPERMARKET.**  
11 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
12 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

13 **Indian Curry Powder**

14 68. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 67 of this complaint as though fully set forth herein.  
16 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Indian Curry Powder, which includes but is not  
18 limited to, "Pure Indian Curry Powder, Net Wt. 6.35 Oz. (180g), Distributed by U-Can  
19 Food Trading, Inc. Pack by Pacific Giant (M) Sdn Bhd. UPC: 0 650897 092192".  
20 ("CURRY POWDER").

21 69. CURRY POWDER contains LEAD.

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

27 71. Plaintiff's allegations regarding CURRY POWDER concerns "[c]onsumer products  
28 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
2 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
3 *25602(b)*. CURRY POWDER is a consumer product, and, as mentioned herein,  
4 exposures to LEAD took place as a result of such normal and foreseeable use.

5 72. Plaintiff is informed, believes, and thereon alleges that between November 19, 2012 and  
6 the present, each of the Defendants knowingly and intentionally exposed California  
7 consumers of CURRY POWDER, which Defendants manufactured, distributed, or sold  
8 as 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 CURRY POWDER in California. Defendants know and intend that  
11 California consumers will use and consume CURRY POWDER, thereby exposing them  
12 to LEAD. Defendants thereby violated Proposition 65.

13 73. The principal routes of exposure were through ingestion, including hand to mouth  
14 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
15 eating and consuming CURRY POWDER, handling CURRY POWDER without  
16 wearing gloves or by touching bare skin or mucus membranes with gloves after handling  
17 CURRY POWDER, or through direct and indirect hand to mouth contact, hand to food  
18 to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing  
19 in particulate matter emanating from CURRY POWDER, as well as through  
20 environmental mediums that carry the LEAD once contained within the CURRY  
21 POWDER.

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



1 75. 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 76. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to LEAD from CURRY POWDER, pursuant  
6 to Health and Safety Code section 25249.7(b).

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

9 **SIXTH CAUSE OF ACTION**

10 **(By CONSUMER ADVOCACY GROUP, INC. and against DEL MAR SUPERMARKET.**  
11 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
12 **Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

13 **Roasted Seaweed**

14 78. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 77 of this complaint as though fully set forth herein.  
16 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
17 distributor, promoter, or retailer of Roasted Seaweed, which includes but is not limited  
18 to, "Roasted Seaweed' Net Wt: .56 oz (16g) Product of China. Distributed by CTC  
19 Food International Inc. DBA Oriental Trading Co., International. UPC: 0 74601 00836  
20 9" ("ROASTED SEAWEED").

21 79. ROASTED SEAWEED contains LEAD.

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

27 81. Plaintiff's allegations regarding ROASTED SEAWEED concerns "[c]onsumer products  
28 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

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

5 82. Plaintiff is informed, believes, and thereon alleges that between December 23, 2012 and  
6 the present, each of the Defendants knowingly and intentionally exposed California  
7 consumers of ROASTED SEAWEED, which Defendants manufactured, distributed, or  
8 sold as mentioned above, to LEAD without first providing any type of clear and  
9 reasonable warning of such to the exposed persons before the time of exposure.

10 Defendants have distributed and sold ROASTED SEAWEED in California. Defendants  
11 know and intend that California consumers will use and consume ROASTED  
12 SEAWEED, thereby exposing them to LEAD. Defendants thereby violated Proposition  
13 65.

14 83. The principal routes of exposure were through ingestion, including hand to mouth  
15 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by  
16 eating and consuming ROASTED SEAWEED, handling ROASTED SEAWEED  
17 without wearing gloves or by touching bare skin or mucus membranes with gloves after  
18 handling ROASTED SEAWEED, or through direct and indirect hand to mouth contact,  
19 hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane,  
20 or breathing in particulate matter emanating from ROASTED SEAWEED, as well as  
21 through environmental mediums that carry the LEAD once contained within the  
22 ROASTED SEAWEED.

23 84. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of  
24 Proposition 65 as to ROASTED SEAWEED have been ongoing and continuous to the  
25 date of the signing of this complaint, as Defendants engaged and continue to engage in  
26 conduct which violates Health and Safety Code section 25249.6, including the  
27 manufacture, distribution, promotion, and sale of ROASTED SEAWEED, so that a  
28

1 separate and distinct violation of Proposition 65 occurred each and every time a person  
2 was exposed to LEAD by ROASTED SEAWEED as mentioned herein.

3 85. 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 86. 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 ROASTED SEAWEED,  
8 pursuant to Health and Safety Code section 25249.7(b).

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

11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

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

18  
19  
20 Dated: March 8, 2016

YEROUSHALMI & YEROUSHALMI

21  
22  
23 BY: 

24 Reuben Yeroushalmi  
25 Attorneys for Plaintiff,  
26 Consumer Advocacy Group, Inc.  
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