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OF ORIGINAL FILED
Los Angeles Superior Court

NOV 03 2016

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 GREEN FARM MARKET, a business entity
19 form unknown; and DOES 1-20;

20 Defendants.

CASE NO. **BC 6 3 9 6 9 9**

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 GREEN FARM MARKET 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 2. Defendant GREEN FARM MARKET ("GREEN FARM") is a business entity form
2 unknown, doing business in the State of California at all relevant times herein.
- 3 3. Corporation, doing business in the State of California at all relevant times herein.
- 4 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
5 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
6 this complaint to allege their true names and capacities when ascertained. Plaintiff is
7 informed, believes, and thereon alleges that each fictitiously named defendant is
8 responsible in some manner for the occurrences herein alleged and the damages caused
9 thereby.
- 10 5. At all times mentioned herein, the term "Defendants" includes GREEN FARM and
11 DOES 1-20.
- 12 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
13 times mentioned herein have conducted business within the State of California.
- 14 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
15 including DOES 1-20, was an agent, servant, or employee of each of the other
16 Defendants. In conducting the activities alleged in this Complaint, each of the
17 Defendants was acting within the course and scope of this agency, service, or
18 employment, and was acting with the consent, permission, and authorization of each of
19 the other Defendants. All actions of each of the Defendants alleged in this Complaint
20 were ratified and approved by every other Defendant or their officers or managing
21 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
22 the alleged wrongful conduct of each of the other Defendants.
- 23 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
24 Defendants was a person doing business within the meaning of Health and Safety Code
25 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
26 employees at all relevant times.

27 //
28 //

- 1 13. Proposition 65 requires the Governor of California to publish a list of chemicals known
2 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
3 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
4 over 700 chemicals and chemical families. Proposition 65 imposes warning
5 requirements and other controls that apply to Proposition 65-listed chemicals.
- 6 14. All businesses with ten (10) or more employees that operate or sell products in
7 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
8 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
9 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
10 reasonable" warnings before exposing a person, knowingly and intentionally, to a
11 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 12 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
13 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
14 25249.7. "Threaten to violate" means "to create a condition in which there is a
15 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
16 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
17 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 18 16. Plaintiff identified certain practices of manufacturers and distributors of products
19 bearing Lead and Lead Compounds ("LEAD") of exposing, knowingly and
20 intentionally, persons in California to the Proposition 65-listed chemicals of such
21 products without first providing clear and reasonable warnings of such to the exposed
22 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
23 in such practice.
- 24 17. On February 27, 1987, the Governor of California added lead to the list of chemicals
25 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
26 lead is known to the State to cause developmental, female, and male reproductive
27 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
28 months after addition of lead to the list of chemicals known to the State to cause

1 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
2 and discharge prohibitions.

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

9 **SATISFACTION OF PRIOR NOTICE**

10 19. On or about November 19, 2015, Plaintiff served notice of alleged violations of Health
11 and Safety Code section 25249.6, concerning consumer products exposures, subject to a
12 private action to GREEN FARM and to the California Attorney General, County District
13 Attorneys, and City Attorneys for each city containing a population of at least 750,000
14 people in whose jurisdictions the violations allegedly occurred, concerning the product
15 Turmeric Powder containing LEAD.

16 20. On or about March 14, 2016, Plaintiff served notice of alleged violations of Health and
17 Safety Code section 25249.6, concerning consumer products exposures, subject to a
18 private action to GREEN FARM and to the California Attorney General, County District
19 Attorneys, and City Attorneys for each city containing a population of at least 750,000
20 people in whose jurisdictions the violations allegedly occurred, concerning the product
21 Turmeric Powder containing LEAD.

22 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
23 products involved, the likelihood that such products would cause users to suffer
24 significant exposures to LEAD, and the corporate structure of each of the Defendants.

25 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
26 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
27 for Plaintiff who executed the certificate had consulted with at least one person with
28 relevant and appropriate expertise who reviewed data regarding the exposures to LEAD,

1 the subject Proposition 65-listed chemicals of this action. Based on that information, the
2 attorney for Plaintiff who executed the Certificate of Merit believed there was a
3 reasonable and meritorious case for this private action. The attorney for Plaintiff
4 attached to the Certificate of Merit served on the Attorney General the confidential
5 factual information sufficient to establish the basis of the Certificate of Merit.

6 23. 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 24. Plaintiff is commencing this action more than sixty (60) days from the dates that
10 Plaintiff gave notices of the alleged violation to GREEN FARM the public prosecutors
11 referenced in Paragraphs 19 and 20.

12 25. 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 GREEN FARM and DOES 1-
17 20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
18 of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

19 **Turmeric Powder**

20 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
21 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.
22 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Turmeric Powder, which includes but is not limited
24 to, "KIM TU THAP, BOT NGHE, "Tumeric Powder", Product of U.S.A. (NET WT.
25 2oz, 56.7 grams) Packed By: Trong Food International, Santa Ana, CA 92703 (714)
26 550-0372, 'www.spiceofvietnam.com'; UPC: 0 39606 00127 2" ("TURMERIC").

27 27. TURMERIC contains LEAD .
28

1 28. Defendants knew or should have known that LEAD has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of LEAD in TURMERIC within Plaintiff's notice of alleged violations
5 further discussed above at Paragraphs 19 and 20.

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

12 30. Plaintiff is informed, believes, and thereon alleges that between November 19, 2012 and
13 the present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of TURMERIC, which Defendants manufactured, distributed, or
15 sold as mentioned above, to LEAD, without first providing any type of clear and
16 reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold TURMERIC in California. Defendants know and
18 intend that California consumers will use TURMERIC, thereby exposing them to
19 LEAD. Defendants thereby violated Proposition 65.

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

26 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to TURMERIC have been ongoing and continuous to the date of the
28 signing of this complaint, as Defendants engaged and continue to engage in conduct

1 which violates Health and Safety Code section 25249.6, including the manufacture,
2 distribution, promotion, and sale of TURMERIC, so that a separate and distinct violation
3 of Proposition 65 occurred each and every time a person was exposed to LEAD by
4 TURMERIC as mentioned herein.

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

8 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to LEAD from TURMERIC, pursuant to
10 Health and Safety Code section 25249.7(b).

11 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
12 filing this Complaint.

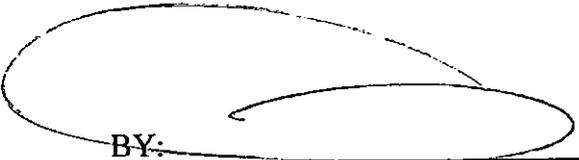
13 **PRAYER FOR RELIEF**

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: November 2, 2016

YEROUSHALMI & YEROUSHALMI

23
24
25 BY: 

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