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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JUL 14 2016

Sherni R. Carter, Executive Officer/Clerk  
By: Judi Lara, 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 HONG KONG SUPERMARKET OF  
19 MONTEREY PARK, LTD., a California  
20 Corporation, and DOES 1-20;

21 Defendants.

CASE NO. **BC 6 27 223**

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)

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

25 **THE PARTIES**

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

1 **JURISDICTION**

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

19  
20 **BACKGROUND AND PRELIMINARY FACTS**

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

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
2 fit.

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

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

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

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

25 16. On February 27, 1987 the Governor of California added Lead to the list of chemicals  
26 known to the State to cause developmental and reproductive toxicity, and on October 1,  
27 1992, the Governor added Lead and Lead Compounds to the list of chemicals known to  
28 the State to cause cancer. Pursuant to Health and Safety Code sections 25249.9 and

1 25249.10, twenty (20) months after addition of LEAD to the list of chemicals known to  
2 the State to cause cancer and reproductive toxicity, LEAD became fully subject to  
3 Proposition 65 warning requirements and discharge prohibitions.

4  
5 **SATISFACTION OF PRIOR NOTICE**

6 17. On or about December 15, 2015, Plaintiff's notice of alleged violations of Health and  
7 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
8 private action to HONG KONG, and to the California Attorney General, County District  
9 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
10 people in whose jurisdictions the violations allegedly occurred, concerning Galangal  
11 Powder containing LEAD.

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

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

24 20. 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 21. Plaintiff is commencing this action more than sixty (60) days from the dates that  
2 Plaintiff gave notices of the alleged violation to Defendants, and the public prosecutors  
3 referenced in Paragraph 17.

4 22. 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  
8 **FIRST CAUSE OF ACTION**

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

13 **Galangal Powder**

14 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.  
16 Each of Defendants HONG KONG, and DOES 1-20 is, and at all times mentioned  
17 herein was, a manufacturer, distributor, promoter, or retailer of Galangal Powder, which  
18 includes but is not limited to, ““Butterfly Since 1942” Galangal Powder, Net. Weight  
19 (55g/ 2oz) Produced By PT Gunacipta Multirasa Made in Indonesia, Sole. Distributor:  
20 Jans Enterprises Corp (USA). Production Code 450 01, 120516 UPC: 8 992984 610424”  
21 (“GALANGAL POWDER”).

22 24. GALANGAL POWDER contains LEAD.

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

28 26. Plaintiff's allegations regarding GALANGAL POWDER concerns “[c]onsumer  
products exposure[s],” which “is an exposure that results from a person's acquisition,  
purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.*

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

3 27. Plaintiff is informed, believes, and thereon alleges that between December 7, 2012 and  
4 the present, each of the Defendants knowingly and intentionally exposed their California  
5 consumers and users of GALANGAL POWDER, which Defendants manufactured,  
6 distributed, or sold as mentioned above, to Lead, without first providing any type of  
7 clear and reasonable warning of such to the exposed persons before the time of  
8 exposure. Defendants have distributed and sold GALANGAL POWDER in California.  
9 Defendants know and intend that California consumers will use GALANGAL  
10 POWDER, thereby exposing them to LEAD. Defendants thereby violated Proposition  
11 65.

12 28. 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 GALANGAL POWDER, handling GALANGAL POWDER  
15 without wearing gloves or by touching bare skin or mucus membranes with gloves after  
16 handling GALANGAL POWDER, 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 GALANGAL POWDER, as well as  
19 through environmental mediums that carry the LEAD within the GALANGAL  
20 POWDER

21 29. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
22 Proposition 65 as to GALANGAL POWDER 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 GALANGAL POWDER, so that a  
26 separate and distinct violation of Proposition 65 occurred each and every time a person  
27 was exposed to LEAD by GALANGAL POWDER as mentioned herein.

1 30. 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 31. 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 GALANGAL POWDER,  
6 pursuant to Health and Safety Code section 25249.7(b).

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

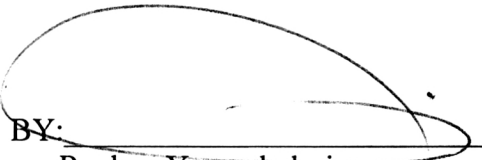
9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

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

16  
17 Dated: July 14, 2016

YEROUSHALMI & YEROUSHALMI

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19  
20 BY:   
21 Reuben Yeroushalmi  
22 Attorneys for Plaintiff,  
23 Consumer Advocacy Group, Inc.  
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