

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

3 **JURISDICTION**

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

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

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

21 **BACKGROUND AND PRELIMINARY FACTS**

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

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

3 13. 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 14. 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 15. 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 16. Plaintiff identified certain practices of manufacturers and distributors of products
21 bearing Lead and Lead compounds (“LEAD”) of exposing, knowingly and intentionally,
22 persons in California to the Proposition 65-listed chemicals of such products without
23 first providing clear and reasonable warnings of such to the exposed persons prior to the
24 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

25 17. On February 27, 1987, the Governor of California added lead to the list of chemicals
26 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
27 lead is known to the State to cause developmental, female, and male reproductive
28 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)

1 months after addition of lead to the list of chemicals known to the State to cause
2 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements
3 and discharge prohibitions.

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

10 **SATISFACTION OF PRIOR NOTICE**

11 19. On or about May 4, 2016, Plaintiff served notice of alleged violations of Health and
12 Safety Code section 25249.6, concerning consumer products exposures, subject to a
13 private action to BADIA, ROSS, and to the California Attorney General, County District
14 Attorneys, and City Attorneys for each city containing a population of at least 750,000
15 people in whose jurisdictions the violations allegedly occurred, concerning the product
16 Ground Cumin containing LEAD.

17 20. On or about May 25, 2016, Plaintiff served notice of alleged violations of Health and
18 Safety Code section 25249.6, concerning consumer products exposures, subject to a
19 private action to BADIA, ROSS, and to the California Attorney General, County District
20 Attorneys, and City Attorneys for each city containing a population of at least 750,000
21 people in whose jurisdictions the violations allegedly occurred, concerning the product
22 Curry Powder containing LEAD.

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

26 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
27 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
28 for Plaintiff who executed the certificate had consulted with at least one person with

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

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

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

13 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
14 any applicable district attorney or city attorney has commenced and is diligently
15 prosecuting an action against the Defendants.

16 **FIRST CAUSE OF ACTION**

17 **(By CONSUMER ADVOCACY GROUP, INC. and against BADIA, ROSS, and DOES 1-**
18 **10 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**
19 **of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

20 **Ground Cumin**

21 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.
23 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Ground Cumin, which includes but is not limited to,
25 ““BADIA Ground Cumin Comino Molido. Net Wt 16 oz (453.6g) Badia Spices Inc.,
26 P.O. Box 226497. UPC: 0 33844 00516 0” dd’s Discounts D5170 C4121
27 400136824561” (“CUMIN”).

28 27. CUMIN contains LEAD.

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 CUMIN within Plaintiff's notice of alleged violations further
5 discussed above at Paragraph 19.

6 29. Plaintiff's allegations regarding CUMIN 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 CUMIN are consumer products, and, as mentioned herein, exposures to LEAD took
11 place as a result of such normal and foreseeable use.

12 30. Plaintiff is informed, believes, and thereon alleges that between May 4, 2013, and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of CUMIN, which Defendants manufactured, distributed, or sold as
15 mentioned above, to LEAD, without first providing any type of clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed and sold CUMIN in California. Defendants know and intend that California
18 consumers will use CUMIN, thereby exposing them to LEAD. Defendants thereby
19 violated Proposition 65.

20 31. The principal routes of exposure were through ingestion, including hand to mouth
21 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by
22 eating and consuming CUMIN, handling CUMIN without wearing gloves or by
23 touching bare skin or mucus membranes with gloves after handling CUMIN, or through
24 direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food
25 then to mouth, hand to mucous membrane, or breathing in particulate matter emanating
26 from CUMIN, as well as through environmental mediums that carry the LEAD once
27 contained within the CUMIN.
28

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

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

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

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

16 **SECOND CAUSE OF ACTION**

17 **(By CONSUMER ADVOCACY GROUP, INC. and against BADIA, ROSS, and DOES 11-**
18 **20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**
19 **of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

20 **Curry Powder**

21 36. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 35 of this complaint as though fully set forth herein.
23 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Curry Powder, which includes but is not limited to,
25 ““BADIA Polvo de CURRY Powder”; “Jamaican Style” Net Wt. 16 oz. (453.6g);
26 “Badia Spices Inc., P.O. Box 226497, Doral, FL 33222-6497”; UPC: 0 33844 00517 7;
27 “dd’s Discounts D5170 C4121; 400136824578” (“CURRY”).

28 37. CURRY contains LEAD.

1 38. 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 CURRY within Plaintiff's notice of alleged violations further
5 discussed above at Paragraph 20.

6 39. Plaintiff's allegations regarding CURRY 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 CURRY are consumer products, and, as mentioned herein, exposures to LEAD took
11 place as a result of such normal and foreseeable use.

12 40. Plaintiff is informed, believes, and thereon alleges that between May 25, 2013, and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of CURRY, which Defendants manufactured, distributed, or sold
15 as mentioned above, to LEAD, without first providing any type of clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed and sold CURRY in California. Defendants know and intend that California
18 consumers will use CURRY, thereby exposing them to LEAD. Defendants thereby
19 violated Proposition 65.

20 41. The principal routes of exposure were through ingestion, including hand to mouth
21 pathways, and inhalation and trans-dermal absorption. Persons sustained exposures by
22 eating and consuming CURRY, handling CURRY without wearing gloves or by
23 touching bare skin or mucus membranes with gloves after handling CURRY, or through
24 direct and indirect hand to mouth contact, hand to food to mouth, direct contact to food
25 then to mouth, hand to mucous membrane, or breathing in particulate matter emanating
26 from CURRY, as well as through environmental mediums that carry the LEAD once
27 contained within the CURRY.
28

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

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

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

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

16 **PRAYER FOR RELIEF**

17 Plaintiff demands against each of the Defendants as follows:

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

23
24 Dated: January 6, 2017

YEROUSHALMI & YEROUSHALMI

25 BY: 

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