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ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 20 2016

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

10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

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 ROM AMERICA, INC., a California
19 Corporation; HANNAM CHAIN U.S.A.,
20 INC. d.b.a. MARKET WORLD, a California
21 Corporation; and DOES 1-20;

22 Defendants.

CASE NO.

BC 6 38 1 2 2

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)

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
24 Defendants ROM AMERICA, INC.; HANNAM CHAIN U.S.A., INC. d.b.a. MARKET
25 WORLD; and DOES 1-20 as follows:

26 **THE PARTIES**

- 27 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
28 organization qualified to do business in the State of California. CAG is a person within
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 ROM AMERICA, INC. ("ROM AMERICA") is a California Corporation,
4 doing business in the State of California at all relevant times herein.

5 3. Defendant HANNAM CHAIN U.S.A., INC. d.b.a. MARKET WORLD ("HANNAM
6 CHAIN") is a California Corporation, doing business in the State of California at all
7 relevant times herein.

8 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
9 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend
10 this complaint to allege their true names and capacities when ascertained. Plaintiff is
11 informed, believes, and thereon alleges that each fictitiously named defendant is
12 responsible in some manner for the occurrences herein alleged and the damages caused
13 thereby.

14 5. At all times mentioned herein, the term "Defendant" includes ROM AMERICA,
15 HANNAM CHAIN, and DOES 1-20.

16 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
17 times mentioned herein have conducted business within the State of California.

18 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
19 including DOES 1-20, was an agent, servant, or employee of each of the other
20 Defendants. In conducting the activities alleged in this Complaint, each of the
21 Defendants was acting within the course and scope of this agency, service, or
22 employment, and was acting with the consent, permission, and authorization of each of
23 the other Defendants. All actions of each of the Defendants alleged in this Complaint
24 were ratified and approved by every other Defendant or their officers or managing
25 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
26 the alleged wrongful conduct of each of the other Defendants.

27 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
28 Defendants was a person doing business within the meaning of Health and Safety Code

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 Los Angeles because one or more of the instances of
18 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
19 because Defendants conducted, and continue to conduct, business in the County of Los
20 Angeles 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"), 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 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 25, 2016, Plaintiff gave notice of alleged violations of Health and
12 Safety Code section 25249.6, concerning consumer products exposures, subject to a
13 private action to ROM AMERICA, HANNAM CHAIN, and to the California Attorney
14 General, County District Attorneys, and City Attorneys for each city containing a
15 population of at least 750,000 people in whose jurisdictions the violations allegedly
16 occurred, concerning Whole Cinnamon containing LEAD.

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

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

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

4 23. Plaintiff is commencing this action more than sixty (60) days from the dates that
5 Plaintiff gave notices of the alleged violation to ROM AMERICA, HANNAM CHAIN,
6 and the public prosecutors referenced in Paragraph 19.

7 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
8 any applicable district attorney or city attorney has commenced and is diligently
9 prosecuting an action against the Defendants.

10 **FIRST CAUSE OF ACTION**

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

14 **Whole Cinnamon**

15 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.
17 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Whole Cinnamon, which includes but is not limited
19 to, "Cinnamon"; "ROMAMERICA, INC."; "NET WT. 8 OZ. POIDS NET 227G";
20 "Distributed by ROMAMERICA, INC. VERNON, CA 90058"; "Product of P.R.O.C.";
21 "Since 1988"; UPC: 0 37557 80738 7 ("CINNAMON").

22 26. CINNAMON contains LEAD.

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

1 28. Plaintiff's allegations regarding CINNAMON concerns "[c]onsumer products
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
5 *25602(b)*. CINNAMON is a consumer product, and, as mentioned herein, exposures to
6 LEAD took place as a result of such normal and foreseeable use.

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

15 30. The principal routes of exposure are through ingestion, including direct and indirect
16 hand to mouth exposure, dermal contact, and, possibly, inhalation. Persons sustained
17 exposures by eating and consuming CINNAMON or by handling CINNAMON without
18 wearing gloves or by touching bare skin or mucus membranes with or without gloves
19 after handling CINNAMON, or through direct and indirect hand to mouth contact, hand
20 to food to mouth, hand to mucous membrane, as well as through environmental
21 mediums that carry the LEAD once contained within the CINNAMON.

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

1 32. 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 33. 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 CINNAMON, pursuant to
6 Health and Safety Code section 25249.7(b).

7 34. 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: October 19, 2016

YEROUSHALMI & YEROUSHALMI

18
19
20 BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff
Consumer Advocacy Group, Inc.