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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 20 2017

Sherri R. Carter, Executive Officer/Clerk
By: M. Soto, Deputy
Moses Soto

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 GEL SPICE COMPANY, INC., a New
17 Jersey Corporation; GEL SPICE, INC., a
18 New Jersey Corporation; GEL SPICE CO.,
19 LLC., a Limited Liability Company; FRESH
20 FINDS, LLC., a Limited Liability Company;
21 BIG LOTS STORES, INC., a Ohio
22 Corporation; BIG LOTS, INC., a Ohio
23 Corporation; GROCERY OUTLET, INC., a
24 California Corporation; CONSOLIDATED
25 PROPERTY HOLDINGS, INC., a Nevada
26 Corporation; TARGET CORPORATION, a
27 Minnesota Corporation; TARGET STORES,
28 INC., a Minnesota Corporation; TARGET
BRANDS, INC., a Minnesota Corporation
and DOES 1-80;

Defendants.

CASE NO. **BC 665798**

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
Defendants GEL SPICE COMPANY, INC., GEL SPICE, INC., GEL SPICE CO., LLC., FRESH

1 FINDS, LLC., BIG LOTS STORES, INC., BIG LOTS, INC., GROCERY OUTLET, INC.,
2 CONSOLIDATED PROPERTY HOLDINGS, INC., TARGET CORPORATION, TARGET
3 STORES, INC., TARGET BRANDS, INC., and DOES 1-80 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code section 25249.7, subdivision (d).
- 10 2. Defendant GEL SPICE COMPANY, INC ("SPICE CO.") is a New Jersey Corporation,
11 doing business in the State of California at all relevant times herein.
- 12 3. Defendant GEL SPICE, INC. ("SPICE INC.") is a New Jersey Corporation, doing
13 business in the State of California at all relevant times herein.
- 14 4. Defendant GEL SPICE CO., LLC. ("SPICE LLC.") is a Limited Liability Company,
15 doing business in the State of California at all relevant times herein.
- 16 5. Defendant FRESH FINDS, LLC. ("FRESH") is a Limited Liability Company, doing
17 business in the State of California at all relevant times herein.
- 18 6. Defendant BIG LOTS STORES, INC. ("BIG LOTS STORES") is a Ohio Corporation,
19 doing business in the State of California at all relevant times herein.
- 20 7. Defendant BIG LOTS, INC. ("BIG LOTS") is a Ohio Corporation, doing business in the
21 State of California at all relevant times herein.
- 22 8. Defendant GROCERY OUTLET, INC. ("GROCERY") is a California Corporation,
23 doing business in the State of California at all relevant times herein.
- 24 9. Defendant CONSOLIDATED PROPERTY HOLDINGS, INC. ("CONSOLIDATED")
25 is a Nevada Corporation, doing business in the State of California at all relevant times
26 herein.
- 27 10. Defendant TARGET CORPORATION ("TARGET") is a Minnesota Corporation, doing
28 business in the State of California at all relevant times herein.

1 11. Defendant TARGET STORES, INC. ("TARGET STORES") is a Minnesota
2 Corporation, doing business in the State of California at all relevant times herein.

3 12. Defendant TARGET BRANDS, INC. ("TARGET BRANDS") is a Minnesota
4 Corporation, doing business in the State of California at all relevant times herein.

5 13. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
6 80, and therefore sues these defendants by such fictitious names. Plaintiff will amend
7 this complaint to allege their true names and capacities when ascertained. Plaintiff is
8 informed, believes, and thereon alleges that each fictitiously named defendant is
9 responsible in some manner for the occurrences herein alleged and the damages caused
10 thereby.

11 14. At all times mentioned herein, the term "Defendants" includes SPICE CO., SPICE INC,
12 SPICE LLC., FRESH, BIG LOTS STORES, BIG LOTS, GROCERY,
13 CONSOLIDATED, TARGET, TARGET STORES, TARGET BRANDS and DOES 1-
14 80.

15 15. 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 16. Upon information and belief, at all times relevant to this action, each of the Defendants,
18 including DOES 1-80, 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 17. 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 18. 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 19. 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 20. 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 a with respect to the consumer product that is the subject of this action.

21 BACKGROUND AND PRELIMINARY FACTS

22 21. 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 22. 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 23. 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 24. 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 25. Plaintiff identified certain practices of manufacturers and distributors of products
21 bearing Lead and Lead Compounds ("LEAD") and of exposing, knowingly and
22 intentionally, persons in California to the Proposition 65-listed chemicals of such
23 products without first providing clear and reasonable warnings of such to the exposed
24 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
25 in such practice.

26 26. On February 27, 1987, the Governor of California added LEAD to the list of chemicals
27 known to the State to cause developmental toxicity, male reproductive toxicity, and
28 female reproductive toxicity. On October 1, 1992, the Governor of California added

1 LEAD to the list of chemicals known to the State to cause cancer. Pursuant to Health
2 and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of
3 LEAD to the list of chemicals known to the State to cause reproductive toxicity and
4 cancer, LEAD became fully subject to Proposition 65 warning requirements and
5 discharge prohibitions.

6 27. On or about July 28, 2016, SPICE, INC. issued a recall of one lot of Fresh Finds Ground
7 Turmeric Powder because the product contains elevated lead levels. The recalled "Fresh
8 Finds Ground Turmeric" is packaged in 3.75 oz. PET jars. It has a code of B/B 03/08/19
9 and B/B 05/18/19 on the neck of the container. The package also has a UPC code of
10 81026-01230. The product was distributed at Big Lots Stores throughout the United
11 States. The recall notice was posted on the United State Food and Drug Administration
12 website, at: <https://www.fda.gov/Safety/Recalls/ucm513844.htm>.

13 28. On or about August 5, 2016, SPICE, INC. issued an expanded recall of ground turmeric
14 powder due to elevated lead levels. The additional products recalled are identified in the
15 table below:

Brand/Description and Net Weight	Lot/BB code	UPC NUMBER
Spice Select/8 oz	03/18/19	076114007730
Market Pantry/0.95 oz	05APR2019	085239211038
Gel/15 oz	04/18/19	076114800867
Gel/15 oz	05/16/19	076114800867
Clear Value /0.75oz	04/27/19	036800354920
Lieber's/2 oz	05/13/19	043427006361
Spice Supreme/2 oz	05/17/19	076114364628

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24 The products were distributed by various retailers throughout the United States.
25 Sampling and testing of another product, produced from the same bulk turmeric,
26 revealed the elevated level of lead. The expanded recall notice was posted on the United
27
28

1 State Food and Drug Administration website, at:
2 <https://www.fda.gov/Safety/Recalls/ucm515328.htm>.

3
4 **SATISFACTION OF PRIOR NOTICE**

- 5 29. On or about August 31, 2016, Plaintiff served notice of alleged violations of Health and
6 Safety Code section 25249.6, concerning consumer products exposures, subject to a
7 private action to FRESH, SPICE CO., SPICE INC., SPICE LLC., BIG LOTS STORES,
8 BIG LOTS and to the California Attorney General, County District Attorneys, and City
9 Attorneys for each city containing a population of at least 750,000 people in whose
10 jurisdictions the violations allegedly occurred, concerning the consumer product Ground
11 Cinnamon identified as “Fresh Finds™”; “Ground Cinnamon”; Net Wt. 3.17 oz (160g);
12 FRESHNESS GUARANTEED!”; “A Baker’s favorite for mouthwatering rolls and
13 pastries. Also try sprinkling it atop puddings, hot cereals, even curry dishes for an
14 unexpected taste sensation.” Distributed by: Big Lots Stores, Inc. P.O. Box 28523
15 Columbus, OH 43228; UPC:411010983304; Best By 07/27/18 23:41 containing LEAD.
- 16 30. On or about August 31, 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 FRESH, SPICE CO., SPICE INC., SPICE LLC., BIG LOTS STORES,
19 BIG LOTS and to the California Attorney General, County District Attorneys, and City
20 Attorneys for each city containing a population of at least 750,000 people in whose
21 jurisdictions the violations allegedly occurred, concerning the consumer product Ground
22 Cuming identified as “Fresh Finds™”; “Ground Cumin”; Net Wt. 3.39oz (96g);
23 FRESHNESS GUARANTEED!”; “A great cook’s secret ingredient! Try it with chili,
24 soups stews, or any Mexican dish and bring out the full flavors of all your favorite
25 foods.” Distributed by: Big Lots Stores, Inc. P.O. Box 28523 Columbus, OH 43228;
26 UPC:411010983700; Best By 07/22/18 11:39 containing LEAD.
- 27 31. On or about December 2, 2016, Plaintiff served notice of alleged violations of Health and
28 Safety Code section 25249.6, concerning consumer products exposures, subject to a

1 private action to GROCERY, SPICE CO., SPICE INC., SPICE LLC., and to the
2 California Attorney General, County District Attorneys, and City Attorneys for each city
3 containing a population of at least 750,000 people in whose jurisdictions the violations
4 allegedly occurred, concerning the consumer product Ground Cinnamon identified as
5 "Spice Supreme®"; "Pure Ground Cinnamon"; "Net Wt. 2-1/2 OZ (70 g)"; "Packed by
6 Gel Spice Co., Inc. Bayonne, NJ 07002"; "www.gelspice.com"; "Best By 11/30/18";
7 UPC: 076114380154 containing LEAD.

8 32. On or about December 20, 2016, Plaintiff served notice of alleged violations of Health
9 and Safety Code section 25249.6, concerning consumer products exposures, subject to a
10 private action to GROCERY, SPICE CO., SPICE INC., SPICE LLC., and to the
11 California Attorney General, County District Attorneys, and City Attorneys for each city
12 containing a population of at least 750,000 people in whose jurisdictions the violations
13 allegedly occurred, concerning the consumer product Ground Sage identified as "Spice
14 Supreme"; Ground Sage; Net Wt. 1.75oz or 50g; Packed by Gel Spice Co., Inc.;
15 Bayonne, NJ 07002; www.gelspice.com; UPC: 076114380314 containing LEAD.

16 33. On or about March 7, 2017, 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 BIG LOTS STORES, SPICE CO., SPICE INC., SPICE LLC.,
19 CONSOLIDATED and to the California Attorney General, County District Attorneys,
20 and City Attorneys for each city containing a population of at least 750,000 people in
21 whose jurisdictions the violations allegedly occurred, concerning the consumer product
22 Ground Cloves identified as "Fresh Finds™"; "Ground Cloves"; "Net Wt. 1.5 oz (43g)";
23 "Distributed by: Big Lots Stores, Inc. P.O. Box 28523, Columbus, OH 43228-0523";
24 "PACKED IN THE USA"; "V#1009056"; "ITEM#01140"; 481026011407; "BEST BY
25 08/15/19 13:58" containing LEAD.

26 34. On or about March 7, 2017, Plaintiff served notice of alleged violations of Health and
27 Safety Code section 25249.6, concerning consumer products exposures, subject to a
28 private action to BIG LOTS STORES, SPICE CO., SPICE INC., SPICE LLC.,

1 CONSOLIDATED and to the California Attorney General, County District Attorneys,
2 and City Attorneys for each city containing a population of at least 750,000 people in
3 whose jurisdictions the violations allegedly occurred, concerning the consume product
4 Poultry Seasoning identified as "Fresh Finds™"; "Poultry Seasoning"; "Net Wt. 2.5 oz
5 (71g)"; "INGREDIENTS: SAGE, THYME, SALT, OREGANO, GROUND MUSTARD,
6 BASIL, RED PEPPER AND BLACK PEPPER"; "Distributed by: Big Lots Stores, Inc.
7 P.O. Box 28523, Columbus, OH 43228-0523"; "PACKED IN THE USA";
8 "V#1009056"; "ITEM#FFPOULTRY"; 481008969009; "BEST BY 05/19/19 04:06"
9 containing LEAD.

10 35. On or about March 7, 2017, Plaintiff served notice of alleged violations of Health and
11 Safety Code section 25249.6, concerning consumer products exposures, subject to a
12 private action to GROCERY, SPICE CO., SPICE INC., SPICE LLC., and to the
13 California Attorney General, County District Attorneys, and City Attorneys for each city
14 containing a population of at least 750,000 people in whose jurisdictions the violations
15 allegedly occurred, concerning the consumer product Garlic Powder identified as
16 "Gel®"; "GARLIC POWDER"; "NET WT. 14 oz (397g)"; "BEST BY 07/25/19 11:04";
17 "PACKED IN THE USA BY GEL SPICE CO., INC. BAYONNE, NJ 07002";
18 "www.gelspice.com"; 076114800362 containing LEAD.

19 36. On or about March 14, 2017, Plaintiff served notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures, subject to a
21 private action to TARGET, TARGET STORES, TARGET BRANDS, SPICE CO.,
22 SPICE INC., SPICE LLC., and to the California Attorney General, County District
23 Attorneys, and City Attorneys for each city containing a population of at least 750,000
24 people in whose jurisdictions the violations allegedly occurred, concerning the consumer
25 product Ground Turmeric identified as "MARKET PANTRY™"; "GROUND
26 TURMERIC"; "NET WT 0.95 OZ (27g)"; "BEST BY 07JUL2019 09:45";
27 "DISTRIBUTED BY TARGET CORPORATION MINNEAPOLIS, MN 55403";
28

1 "PRODUCT OF INDIA"; "TM & ©2016 Target Brands, Inc."; "Shop Target.com";
2 261021103R03 C-000275-01-075; 085239211038 containing LEAD.

3 37. Before sending the notice of alleged violations, Plaintiff investigated the consumer
4 products involved, the likelihood that such products would cause users to suffer
5 significant exposures to LEAD, and the corporate structure of each of the Defendants.

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

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

18 40. Plaintiff is commencing this action more than sixty (60) days from the dates that
19 Plaintiff gave notices of the alleged violation to SPICE CO., SPICE INC, SPICE LLC.,
20 FRESH, BIG LOTS STORES, BIG LOTS, GROCERY, CONSOLIDATED, TARGET,
21 TARGET STORES, TARGET BRANDS, and the public prosecutors referenced in
22 Paragraphs 29-36.

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

26 ///

FIRST CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against FRESH, SPICE CO., SPICE INC., SPICE LLC., BIG LOTS STORES, BIG LOTS and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

Ground Cinnamon

42. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 41 of this complaint as though fully set forth herein.

43. Each of the Defendants alleged in this cause of action is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Ground Cinnamon identified as “Fresh Finds™”; “Ground Cinnamon”; Net Wt. 3.17 oz (160g); FRESHNESS GUARANTEED!™; “A Baker’s favorite for mouthwatering rolls and pastries. Also try sprinkling it atop puddings, hot cereals, even curry dishes for an unexpected taste sensation.” Distributed by: Big Lots Stores, Inc. P.O. Box 28523 Columbus, OH 43228; UPC:411010983304; Best By 07/27/18 23:41 (“GROUND CINNAMON”).

44. The scope of the First Cause of Action as to GROUND CINNAMON is limited to the specific UPC:411010983304 and the Best By 07/27/18 23:41 designation.

45. GROUND CINNAMON contains LEAD.

46. Defendants knew or should have known that LEAD has been identified by the State of California as a chemical known to cause cancer and developmental and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of LEAD in GROUND CINNAMON within Plaintiff’s notice of alleged violations further discussed above at Paragraph 29.

47. Plaintiff’s allegations regarding GROUND CINNAMON 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). GROUND CINNAMON are consumer products, and, as mentioned
2 herein, exposures to LEAD took place as a result of such normal and foreseeable use.

3 48. Plaintiff is informed, believes, and thereon alleges that between August 31, 2013 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of GROUND CINNAMON, 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 GROUND CINNAMON in California.
9 Defendants know and intend that California consumers will use GROUND
10 CINNAMON, thereby exposing them to LEAD. Defendants thereby violated
11 Proposition 65.

12 49. The principal routes of exposure were through ingestion, including direct (oral), hand to
13 mouth pathways, inhalation and trans-dermal absorption. Persons sustained exposures
14 by 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 50. 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 51. 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 52. 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 53. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

9 ///

10 **SECOND CAUSE OF ACTION**

11 (By CONSUMER ADVOCACY GROUP, INC. and against FRESH, SPICE CO., SPICE
12 INC., SPICE LLC., BIG LOTS STORES, BIG LOTS and DOES 11-20 for Violations of
13 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*
Safety Code, §§ 25249.5, et seq.))

14 **Ground Cumin**

15 54. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 53 of this complaint as though fully set forth herein.

17 55. Each of the Defendants alleged in this cause of action is, and at all times mentioned
18 herein was, a manufacturer, distributor, promoter, or retailer of Ground Cumin identified
19 as "Fresh Finds™"; "Ground Cumin"; Net Wt. 3.39oz (96g); FRESHNESS
20 GUARANTEED!"; "A great cook's secret ingredient! Try it with chili, soups stews, or
21 any Mexican dish and bring out the full flavors of all your favorite foods." Distributed
22 by: Big Lots Stores, Inc. P.O. Box 28523 Columbus, OH 43228; UPC:411010983700;
23 Best By 07/22/18 11:39 ("GROUND CUMIN").

24 56. The scope of the Second Cause of Action as to GROUND CUMIN is limited to the
25 specific UPC: 411010983700 and the Best By 07/22/18 11:39 designation.

26 57. GROUND CUMIN contains LEAD.

27 58. Defendants knew or should have known that LEAD has been identified by the State of
28 California as a chemical known to cause cancer and developmental and reproductive

1 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
2 were also informed of the presence of LEAD in GROUND CUMIN within Plaintiff's
3 notice of alleged violations further discussed above at Paragraph 30.

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

10 60. Plaintiff is informed, believes, and thereon alleges that between August 31, 2013 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of GROUND CUMIN, which Defendants manufactured,
13 distributed, or sold as mentioned above, to LEAD, without first providing any type of
14 clear and reasonable warning of such to the exposed persons before the time of
15 exposure. Defendants have distributed and sold GROUND CUMIN in California.
16 Defendants know and intend that California consumers will use GROUND CUMIN,
17 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

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

27 62. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
28 Proposition 65 as to GROUND CUMIN have been ongoing and continuous to the date

1 of the signing of this complaint, as Defendants engaged and continue to engage in
2 conduct which violates Health and Safety Code section 25249.6, including the
3 manufacture, distribution, promotion, and sale of GROUND CUMIN, so that a separate
4 and distinct violation of Proposition 65 occurred each and every time a person was
5 exposed to LEAD by GROUND CUMIN as mentioned herein.

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

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

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

14 ///

15 **THRID CAUSE OF ACTION**

16 (By CONSUMER ADVOCACY GROUP, INC. and against GROCERY, SPICE CO.,
17 SPICE INC., SPICE LLC., and DOES 21-30 for Violations of Proposition 65, The Safe
18 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et
19 seq.*))

20 **Ground Cinnamon II**

21 66. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 65 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 Cinnamon identified as "Spice Supreme®";
25 "Pure Ground Cinnamon"; "Net Wt. 2-1/2 OZ (70 g)"; "Packed by Gel Spice Co., Inc.
26 Bayonne, NJ 07002"; "www.gelspice.com"; "Best By 11/30/18"; UPC: 076114380154
27 ("GROUND CINNAMON II").

28 67. The scope of the Third Cause of Action as to GROUND CINNAMON II is limited to
the specific UPC: 076114380154 and the Best By 11/30/18 designation.

1 68. GROUND CINNAMON II contains LEAD.

2 69. Defendants knew or should have known that LEAD has been identified by the State of
3 California as a chemical known to cause cancer and developmental and reproductive
4 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
5 were also informed of the presence of LEAD in GROUND CINNAMON II within
6 Plaintiff's notice of alleged violations further discussed above at Paragraph 31.

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

14 71. Plaintiff is informed, believes, and thereon alleges that between December 2, 2013 and
15 the present, each of the Defendants knowingly and intentionally exposed California
16 consumers and users of GROUND CINNAMON II, which Defendants manufactured,
17 distributed, or sold as mentioned above, to LEAD, without first providing any type of
18 clear and reasonable warning of such to the exposed persons before the time of
19 exposure. Defendants have distributed and sold GROUND CINNAMON II in
20 California. Defendants know and intend that California consumers will use GROUND
21 CINNAMON II, thereby exposing them to LEAD. Defendants thereby violated
22 Proposition 65.

23 72. The principal routes of exposure were through ingestion, including direct (oral)
24 ingestion, hand to mouth pathways, and inhalation and trans-dermal absorption. Persons
25 sustained exposures by eating and consuming GROUND CINNAMON II, handling
26 GROUND CINNAMON II without wearing gloves or by touching bare skin or mucus
27 membranes with gloves after handling GROUND CINNAMON II, or through direct and
28 indirect hand to mouth contact, hand to food to mouth, direct contact to food then to

1 mouth, hand to mucous membrane, or breathing in particulate matter emanating from
2 GROUND CINNAMON II, as well as through environmental mediums that carry the
3 LEAD once contained within the GROUND CINNAMON II.

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

11 74. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
13 violations alleged herein will continue to occur into the future.

14 75. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to LEAD from GROUND CINNAMON II,
16 pursuant to Health and Safety Code section 25249.7(b).

17 76. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
18 filing this Complaint.

19 ///

20 **FOURTH CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against GROCERY, SPICE CO.,**
22 **SPICE INC., SPICE LLC., and DOES 31-40 for Violations of Proposition 65, The Safe**
23 **Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et**
24 **seq.))**

25 **Ground Sage**

26 77. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
27 reference paragraphs 1 through 76 of this complaint as though fully set forth herein.
28 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Ground Sage identified as "Spice Supreme"; Ground

1 Sage; Net Wt. 1.75oz or 50g; Packed by Gel Spice Co., Inc.; Bayonne, NJ 07002;
2 www.gelspice.com; UPC: 076114380314 ("GROUND SAGE").

3 78. The scope of the Fourth Cause of Action as to GROUND SAGE is limited to the
4 specific UPC: 076114380314 and the Best By 10/7/18 10:01 designation.

5 79. GROUND SAGE contains LEAD.

6 80. Defendants knew or should have known that LEAD has been identified by the State of
7 California as a chemical known to cause cancer and developmental and reproductive
8 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
9 were also informed of the presence of LEAD in GROUND SAGE within Plaintiff's
10 notice of alleged violations further discussed above at Paragraph 32.

11 81. Plaintiff's allegations regarding GROUND SAGE concerns "[c]onsumer products
12 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
13 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
14 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
15 *25602(b)*. GROUND CINNAMON II are consumer products, and, as mentioned herein,
16 exposures to LEAD took place as a result of such normal and foreseeable use.

17 82. Plaintiff is informed, believes, and thereon alleges that between December 19, 2013 and
18 the present, each of the Defendants knowingly and intentionally exposed California
19 consumers and users of GROUND SAGE, which Defendants manufactured, distributed,
20 or sold as mentioned above, to LEAD, without first providing any type of clear and
21 reasonable warning of such to the exposed persons before the time of exposure.
22 Defendants have distributed and sold GROUND SAGE in California. Defendants know
23 and intend that California consumers will use GROUND SAGE, thereby exposing them
24 to LEAD. Defendants thereby violated Proposition 65.

25 83. The principal routes of exposure were through ingestion, including direct (oral)
26 ingestion, hand to mouth pathways, and inhalation and trans-dermal absorption. Persons
27 sustained exposures by eating and consuming GROUND SAGE, handling GROUND
28 SAGE without wearing gloves or by touching bare skin or mucus membranes with

1 gloves after handling GROUND SAGE, or through direct and indirect hand to mouth
2 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous
3 membrane, or breathing in particulate matter emanating from GROUND SAGE, as well
4 as through environmental mediums that carry the LEAD once contained within the
5 GROUND SAGE.

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

13 85. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur into the future.

16 86. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to LEAD from GROUND SAGE, pursuant to
18 Health and Safety Code section 25249.7(b).

19 Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
20 filing this Complaint.

21 ///

22 **FIFTH CAUSE OF ACTION**

23 (By CONSUMER ADVOCACY GROUP, INC. and against BIG LOTS STORES, SPICE
24 CO., SPICE INC., SPICE LLC., CONSOLIDATED, and DOES 41-50 for Violations of
25 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &*
Safety Code, §§ 25249.5, et seq.))

26 **Ground Cloves**

27 87. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
28 reference paragraphs 1 through 86 of this complaint as though fully set forth herein.

1 Each of the Defendants alleged in this cause of action is, and at all times mentioned
2 herein was, a manufacturer, distributor, promoter, or retailer of Ground Cloves identified
3 as "Fresh Finds™"; "Ground Cloves"; "Net Wt. 1.5 oz (43g)"; "Distributed by: Big Lots
4 Stores, Inc. P.O. Box 28523, Columbus, OH 43228-0523"; "PACKED IN THE USA";
5 "V#1009056"; "ITEM#01140"; 481026011407; "BEST BY 08/15/19 13:58"
6 ("GROUND CLOVES").

7 88. The scope of the Fifth Cause of Action as to GROUND CLOVES is limited to the
8 specific UPC: 481026011407 and the "BEST BY 08/15/19 13:58 designation.

9 89. GROUND CLOVES contains LEAD.

10 90. Defendants knew or should have known that LEAD has been identified by the State of
11 California as a chemical known to cause cancer and developmental and reproductive
12 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
13 were also informed of the presence of LEAD in GROUND CLOVES within Plaintiff's
14 notice of alleged violations further discussed above at Paragraph 33.

15 91. Plaintiff's allegations regarding GROUND CLOVES concerns "[c]onsumer products
16 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
17 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
18 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
19 25602(b). GROUND CLOVES are consumer products, and, as mentioned herein,
20 exposures to LEAD took place as a result of such normal and foreseeable use.

21 92. Plaintiff is informed, believes, and thereon alleges that between March 7, 2014 and the
22 present, each of the Defendants knowingly and intentionally exposed California
23 consumers and users of GROUND CLOVES, which Defendants manufactured,
24 distributed, or sold as mentioned above, to LEAD, without first providing any type of
25 clear and reasonable warning of such to the exposed persons before the time of
26 exposure. Defendants have distributed and sold GROUND CLOVES in California.
27 Defendants know and intend that California consumers will use GROUND CLOVES,
28 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

1 93. The principal routes of exposure were through ingestion, including direct (oral)
2 ingestion, hand to mouth pathways, and inhalation and trans-dermal absorption. Persons
3 sustained exposures by eating and consuming GROUND CLOVES, handling GROUND
4 CLOVES without wearing gloves or by touching bare skin or mucus membranes with
5 gloves after handling GROUND CLOVES, or through direct and indirect hand to mouth
6 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous
7 membrane, or breathing in particulate matter emanating from GROUND CLOVES, as
8 well as through environmental mediums that carry the LEAD once contained within the
9 GROUND CLOVES.

10 94. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
11 Proposition 65 as to GROUND CLOVES have been ongoing and continuous to the date
12 of the signing of this complaint, as Defendants engaged and continue to engage in
13 conduct which violates Health and Safety Code section 25249.6, including the
14 manufacture, distribution, promotion, and sale of GROUND CLOVES, so that a
15 separate and distinct violation of Proposition 65 occurred each and every time a person
16 was exposed to LEAD by GROUND CLOVES as mentioned herein.

17 95. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
18 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
19 violations alleged herein will continue to occur into the future.

20 96. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to LEAD from GROUND CLOVES,
22 pursuant to Health and Safety Code section 25249.7(b).

23 97. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
24 filing this Complaint.

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SIXTH CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against BIG LOTS STORES, SPICE CO., SPICE INC., SPICE LLC., CONSOLIDATED, and DOES 51-60 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

Poultry Seasoning

98. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 97 of this complaint as though fully set forth herein.

Each of the Defendants alleged in this cause of action is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Poultry Seasoning

identified as "Fresh Finds™"; "Poultry Seasoning"; "Net Wt. 2.5 oz (71g)";

"INGREDIENTS: SAGE, THYME, SALT, OREGANO, GROUND MUSTARD,

BASIL, RED PEPPER AND BLACK PEPPER"; "Distributed by: Big Lots Stores, Inc.

P.O. Box 28523, Columbus, OH 43228-0523"; "PACKED IN THE USA";

"V#1009056"; "ITEM#FFPOULTRY"; 481008969009; "BEST BY 05/19/19 04:06"

("POULTRY SEASONING").

99. The scope of the Sixth Cause of Action as to POULTRY SEASONING is limited to the specific UPC: 481008969009 and the "BEST BY 05/19/19 04:06" designation.

100. POULTRY SEASONING contains LEAD.

101. Defendants knew or should have known that LEAD has been identified by the State of California as a chemical known to cause cancer and developmental and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of LEAD in POULTRY SEASONING within Plaintiff's notice of alleged violations further discussed above at Paragraph 34.

102. Plaintiff's allegations regarding POULTRY SEASONING 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). POULTRY SEASONING are consumer products, and, as mentioned
2 herein, exposures to LEAD took place as a result of such normal and foreseeable use.

3 103. Plaintiff is informed, believes, and thereon alleges that between March 7, 2014
4 and the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of POULTRY SEASONING, 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 POULTRY SEASONING in California.
9 Defendants know and intend that California consumers will use POULTRY
10 SEASONING, thereby exposing them to LEAD. Defendants thereby violated
11 Proposition 65.

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

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

- 1 106. Plaintiff is informed, believes, and thereon alleges that each violation of
2 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and
3 believes that the violations alleged herein will continue to occur into the future.
4 107. 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 POULTRY SEASONING,
6 pursuant to Health and Safety Code section 25249.7(b).
7 108. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein
8 prior to filing this Complaint.

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10 **SEVENTH CAUSE OF ACTION**

11 (By CONSUMER ADVOCACY GROUP, INC. and against GROCERY, SPICE CO.,
12 SPICE INC., SPICE LLC., and DOES 61-70 for Violations of Proposition 65, The Safe
13 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et*
14 *seq.*))

15 **Garlic Powder**

16 109. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 108 of this complaint as though fully set forth herein.
18 Each of the Defendants alleged in this cause of action is, and at all times mentioned
19 herein was, a manufacturer, distributor, promoter, or retailer of Garlic Powder identified
20 as "Gel®"; "GARLIC POWDER"; "NET WT. 14 oz (397g)"; "BEST BY 07/25/19
21 11:04"; "PACKED IN THE USA BY GEL SPICE CO., INC. BAYONNE, NJ 07002";
22 "www.gelspice.com"; 076114800362 ("GARLIC POWDER").

23 110. The scope of the Seventh Cause of Action as to GARLIC POWDER is limited to
24 the specific UPC: 076114800362 and the Best By 07/25/19 11:04 designation.

25 111. GARLIC POWDER contains LEAD.

26 112. Defendants knew or should have known that LEAD has been identified by the
27 State of California as a chemical known to cause cancer and developmental and
28 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.

1 Defendants were also informed of the presence of LEAD in GARLIC POWDER within
2 Plaintiff's notice of alleged violations further discussed above at Paragraph 35.

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

9 114. Plaintiff is informed, believes, and thereon alleges that between March 7, 2014
10 and the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of GARLIC POWDER, which Defendants manufactured,
12 distributed, or sold as mentioned above, to LEAD, without first providing any type of
13 clear and reasonable warning of such to the exposed persons before the time of
14 exposure. Defendants have distributed and sold GARLIC POWDER in California.
15 Defendants know and intend that California consumers will use GARLIC POWDER,
16 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

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

26 116. Plaintiff is informed, believes, and thereon alleges that each of Defendants'
27 violations of Proposition 65 as to GARLIC POWDER have been ongoing and
28 continuous to the date of the signing of this complaint, as Defendants engaged and

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

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

8 118. 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 GARLIC POWDER, pursuant
10 to Health and Safety Code section 25249.7(b).

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

13 ///

14 **EIGHTH CAUSE OF ACTION**

15 (By CONSUMER ADVOCACY GROUP, INC. and against TARGET, TARGET STORES,
16 TARGET BRANDS, SPICE CO., SPICE INC., SPICE LLC., and DOES 71-80 for
17 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
(Health & Safety Code, §§ 25249.5, et seq.))

18 **Ground Turmeric**

19 120. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 119 of this complaint as though fully set forth herein.
21 Each of the Defendants alleged in this cause of action is, and at all times mentioned
22 herein was, a manufacturer, distributor, promoter, or retailer of Ground Turmeric
23 identified as "MARKET PANTRY™"; "GROUND TURMERIC"; "NET WT 0.95 OZ
24 (27g)"; "BEST BY 07JUL2019 09:45"; "DISTRIBUTED BY TARGET
25 CORPORATION MINNEAPOLIS, MN 55403"; "PRODUCT OF INDIA"; "TM &
26 ©2016 Target Brands, Inc."; "Shop Target.com"; 261021103R03 C-000275-01-075;
27 085239211038 ("GROUND TURMERIC").
28

1 121. The scope of the Eighth Cause of Action as to GROUND TURMERIC is limited
2 to the specific UPC: 085239211038 and the Best By 07JUL2019 09:45 designation.

3 122. GROUND TURMERIC contains LEAD.

4 123. Defendants knew or should have known that LEAD has been identified by the
5 State of California as a chemical known to cause cancer and developmental and
6 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
7 Defendants were also informed of the presence of LEAD in GROUND TURMERIC
8 within Plaintiff's notice of alleged violations further discussed above at Paragraph 36.

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

15 125. Plaintiff is informed, believes, and thereon alleges that between March 14, 2014
16 and the present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of GROUND TURMERIC, which Defendants manufactured,
18 distributed, or sold as mentioned above, to LEAD, without first providing any type of
19 clear and reasonable warning of such to the exposed persons before the time of
20 exposure. Defendants have distributed and sold GROUND TURMERIC in California.
21 Defendants know and intend that California consumers will use GROUND
22 TURMERIC, thereby exposing them to LEAD. Defendants thereby violated Proposition
23 65.

24 126. The principal routes of exposure were through ingestion, including direct (oral)
25 ingestion, hand to mouth pathways, and inhalation and trans-dermal absorption. Persons
26 sustained exposures by eating and consuming GROUND TURMERIC, handling
27 GROUND TURMERIC without wearing gloves or by touching bare skin or mucus
28 membranes with gloves after handling GROUND TURMERIC, or through direct and

1 indirect hand to mouth contact, hand to food to mouth, direct contact to food then to
2 mouth, hand to mucous membrane, or breathing in particulate matter emanating from
3 GROUND TURMERIC, as well as through environmental mediums that carry the
4 LEAD once contained within the GROUND TURMERIC.

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

12 128. Plaintiff is informed, believes, and thereon alleges that each violation of
13 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and
14 believes that the violations alleged herein will continue to occur into the future.

15 129. Based on the allegations herein, Defendants are liable for civil penalties of up to
16 \$2,500.00 per day per individual exposure to LEAD from GROUND TURMERIC,
17 pursuant to Health and Safety Code section 25249.7(b).

18 130. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein
19 prior to filing this Complaint.

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PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: June 20, 2017

YEROUSHALMI & YEROUSHALMI

BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.