

1 Reuben Yeroushalmi (SBN 193981)
2 *reuben@yeroushalmi.com*
3 **YEROUSHALMI & YEROUSHALMI**
4 An Association of Independent Law Corporations
5 9100 Wilshire Boulevard, Suite 240W
6 Beverly Hills, California 90212
7 Telephone: 310.623.1926
8 Facsimile: 310.623.1930

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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

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

15 Plaintiff,

16 v.

17 GEL SPICE COMPANY, INC., a New
18 Jersey Corporation; GEL SPICE, INC., a
19 New Jersey Corporation; GEL SPICE CO.,
20 LLC., a Limited Liability Company; BIG
21 LOTS STORES, INC., a Ohio Corporation;
22 BIG LOTS, INC., a Ohio Corporation;
23 GROCERY OUTLET, INC., a California
24 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 1-100;

Defendants.

FILED
Superior Court of California
County of Los Angeles
01/19/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Fletcher Deputy

CASE NO. BC665798

SECOND AMENDED COMPLAINT

FAC Filed: January 18, 2019

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1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges ten (10) causes of action
2 against Defendants GEL SPICE COMPANY, INC., GEL SPICE, INC., GEL SPICE CO., LLC.,
3 BIG LOTS STORES, INC., BIG LOTS, INC., GROCERY OUTLET, INC., CONSOLIDATED
4 PROPERTY HOLDINGS, INC., TARGET CORPORATION, TARGET STORES, INC.,
5 TARGET BRANDS, INC., and DOES 1-100 as follows:

6 **THE PARTIES**

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

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

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

5 12. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
6 90, 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 13. At all times mentioned herein, the term “Defendants” includes SPICE CO., SPICE INC,
12 SPICE LLC., BIG LOTS STORES, BIG LOTS, GROCERY, CONSOLIDATED,
13 TARGET, TARGET STORES, TARGET BRANDS and DOES 1-100.

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

16 15. Upon information and belief, at all times relevant to this action, each of the Defendants,
17 including DOES 1-100, was an agent, servant, or employee of each of the other
18 Defendants. In conducting the activities alleged in this Complaint, each of the
19 Defendants was acting within the course and scope of this agency, service, or
20 employment, and was acting with the consent, permission, and authorization of each of
21 the other Defendants. All actions of each of the Defendants alleged in this Complaint
22 were ratified and approved by every other Defendant or their officers or managing
23 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
24 the alleged wrongful conduct of each of the other Defendants.

25 16. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
26 Defendants was a person doing business within the meaning of Health and Safety Code
27 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
28 employees at all relevant times.

1 **JURISDICTION**

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

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

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

19 **BACKGROUND AND PRELIMINARY FACTS**

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

- 1 21. Proposition 65 requires the Governor of California to publish a list of chemicals known
2 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
3 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains
4 over 700 chemicals and chemical families. Proposition 65 imposes warning
5 requirements and other controls that apply to Proposition 65-listed chemicals.
- 6 22. All businesses with ten (10) or more employees that operate or sell products in
7 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
8 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of
9 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
10 reasonable” warnings before exposing a person, knowingly and intentionally, to a
11 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 12 23. Proposition 65 provides that any person "violating or threatening to violate" the statute
13 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
14 25249.7. "Threaten to violate" means "to create a condition in which there is a
15 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
16 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
17 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 18 24. Plaintiff identified certain practices of manufacturers and distributors of products
19 bearing Lead and Lead Compounds (“LEAD”) and of exposing, knowingly and
20 intentionally, persons in California to the Proposition 65-listed chemicals of such
21 products without first providing clear and reasonable warnings of such to the exposed
22 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
23 in such practice.
- 24 25. On February 27, 1987, the Governor of California added LEAD to the list of chemicals
25 known to the State to cause developmental toxicity, male reproductive toxicity, and
26 female reproductive toxicity. On October 1, 1992, the Governor of California added
27 LEAD to the list of chemicals known to the State to cause cancer. Pursuant to Health
28 and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of

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

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

11 27. On or about August 5, 2016, SPICE, INC. issued an expanded recall of ground turmeric
12 powder due to elevated lead levels. The additional products recalled are identified in the
13 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

23 The products were distributed by various retailers throughout the United States.
24 Sampling and testing of another product, produced from the same bulk turmeric,
25 revealed the elevated level of lead. The expanded recall notice was posted on the United
26 State Food and Drug Administration website, at:
27 <https://www.fda.gov/Safety/Recalls/ucm515328.htm>.

SATISFACTION OF PRIOR NOTICE

28. On or about August 31, 2016, Plaintiff served notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to SPICE CO., SPICE INC., SPICE LLC., BIG LOTS STORES, BIG LOTS and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the consumer product 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 containing LEAD.

29. On or about August 31, 2016, Plaintiff served notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to SPICE CO., SPICE INC., SPICE LLC., BIG LOTS STORES, BIG LOTS and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the consumer product Ground Cuming identified as “Fresh Finds™”; “Ground Cumin”; Net Wt. 3.39oz (96g); FRESHNESS GUARANTEED!”; “A great cook’s secret ingredient! Try it with chili, soups stews, or any Mexican dish and bring out the full flavors of all your favorite foods.” Distributed by: Big Lots Stores, Inc. P.O. Box 28523 Columbus, OH 43228; UPC:411010983700; Best By 07/22/18 11:39 containing LEAD.

30. On or about December 2, 2016, Plaintiff served notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to GROCERY, SPICE CO., SPICE INC., SPICE LLC., and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations

1 allegedly occurred, concerning the consumer product Ground Cinnamon identified as
2 “Spice Supreme®”; “Pure Ground Cinnamon”; “Net Wt. 2-1/2 OZ (70 g)”; “Packed by
3 Gel Spice Co., Inc. Bayonne, NJ 07002”; “www.gelspice.com”; “Best By 11/30/18”;
4 UPC: 076114380154 containing LEAD.

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

13 32. On or about March 7, 2017, Plaintiff served notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures, subject to a
15 private action to BIG LOTS STORES, SPICE CO., SPICE INC., SPICE LLC.,
16 CONSOLIDATED and to the California Attorney General, County District Attorneys,
17 and City Attorneys for each city containing a population of at least 750,000 people in
18 whose jurisdictions the violations allegedly occurred, concerning the consumer product
19 Ground Cloves identified as “Fresh Finds™”; “Ground Cloves”; “Net Wt. 1.5 oz (43g)”;
20 “Distributed by: Big Lots Stores, Inc. P.O. Box 28523, Columbus, OH 43228-0523”;
21 “PACKED IN THE USA”; “V#1009056”; “ITEM#01140”; 481026011407; “BEST BY
22 08/15/19 13:58”containing LEAD.

23 33. On or about March 7, 2017, Plaintiff served notice of alleged violations of Health and
24 Safety Code section 25249.6, concerning consumer products exposures, subject to a
25 private action to BIG LOTS STORES, SPICE CO., SPICE INC., SPICE LLC.,
26 CONSOLIDATED and to the California Attorney General, County District Attorneys,
27 and City Attorneys for each city containing a population of at least 750,000 people in
28 whose jurisdictions the violations allegedly occurred, concerning the consume product

1 Poultry Seasoning identified as “Fresh Finds™”; “Poultry Seasoning”; “Net Wt. 2.5 oz
2 (71g)”; “INGREDIENTS: SAGE, THYME, SALT, OREGANO, GROUND MUSTARD,
3 BASIL, RED PEPPER AND BLACK PEPPER”; “Distributed by: Big Lots Stores, Inc.
4 P.O. Box 28523, Columbus, OH 43228-0523”; “PACKED IN THE USA”;
5 “V#1009056”; “ITEM#FFPOULTRY”; 481008969009; “BEST BY 05/19/19 04:06”
6 containing LEAD.

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

16 35. On or about March 14, 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 TARGET, TARGET STORES, TARGET BRANDS, SPICE CO.,
19 SPICE INC., SPICE LLC., 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 consumer
22 product Ground Turmeric identified as “MARKET PANTRY™”; “GROUND
23 TURMERIC”; “NET WT 0.95 OZ (27g)”; “BEST BY 07JUL2019 09:45”;
24 “DISTRIBUTED BY TARGET CORPORATION MINNEAPOLIS, MN 55403”;
25 “PRODUCT OF INDIA”; “TM & ©2016 Target Brands, Inc.”; “Shop Target.com”;
26 261021103R03 C-000275-01-075; 085239211038 containing LEAD.

27 36. On or about April 13, 2018, 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 SPICE CO, and to the California Attorney General, County District
2 Attorneys, and City Attorneys for each city containing a population of at least 750,000
3 people in whose jurisdictions the violations allegedly occurred, concerning the consumer
4 product Ground Cinnamon identified as “Spice Supreme”; “GROUND CINNAMON”;
5 “Net Wt 5-1/4 oz (148g)”; “Ingredients: Cinnamon”; “Packed by Gel Spice Co., Inc.
6 Bayonne, NJ 07002”; UPC 0 76114 33004 3”containing LEAD.

7 37. On or about August 18, 2020, Plaintiff served notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer products exposures, subject to a
9 private action to SPICE CO, and to the California Attorney General, County District
10 Attorneys, and City Attorneys for each city containing a population of at least 750,000
11 people in whose jurisdictions the violations allegedly occurred, concerning the consumer
12 product Ground Cinnamon identified as “Market Pantry”; “Ground Cinnamon”; “Net Wt
13 4.1 oz (117g)”; “Distributed by Target Corporation”; “C-000275-01-075;” “261 02 1106
14 R02”; “UPC 0 85239 21106 9”; “Product of Indonesia, Vietnam” containing LEAD.

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

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

1 40. Plaintiff's notices of alleged violations also included Certificates 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 41. Plaintiff is commencing this action more than sixty (60) days from the dates that
5 Plaintiff gave notices of the alleged violation to SPICE CO., SPICE INC, SPICE LLC.,
6 BIG LOTS STORES, BIG LOTS, GROCERY, CONSOLIDATED, TARGET,
7 TARGET STORES, TARGET BRANDS, and the public prosecutors referenced in
8 Paragraphs 28-37.

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

12 **FIRST CAUSE OF ACTION**

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

16 **Ground Cinnamon**

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

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

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

1 46. GROUND CINNAMON contains LEAD.

2 47. 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 within
6 Plaintiff's notice of alleged violations further discussed above at Paragraph 28.

7 48. Plaintiff's allegations regarding GROUND CINNAMON 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 are consumer products, and, as mentioned
12 herein, exposures to LEAD took place as a result of such normal and foreseeable use.

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

22 50. The principal routes of exposure were through ingestion, including direct (oral), hand to
23 mouth pathways, inhalation and trans-dermal absorption. Persons sustained exposures
24 by eating and consuming GROUND CINNAMON, handling GROUND CINNAMON
25 without wearing gloves or by touching bare skin or mucus membranes with gloves after
26 handling GROUND CINNAMON, or through direct and indirect hand to mouth contact,
27 hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane,
28 or breathing in particulate matter emanating from GROUND CINNAMON, as well as

1 through environmental mediums that carry the LEAD once contained within the
2 GROUND CINNAMON.

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

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

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

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

18 **SECOND CAUSE OF ACTION**

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

22 **Ground Cumin**

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

25 56. Each of the Defendants alleged in this cause of action is, and at all times mentioned
26 herein was, a manufacturer, distributor, promoter, or retailer of Ground Cumin identified
27 as "Fresh Finds™"; "Ground Cumin"; Net Wt. 3.39oz (96g); FRESHNESS
28 GUARANTEED!"; "A great cook's secret ingredient! Try it with chili, soups stews, or

1 any Mexican dish and bring out the full flavors of all your favorite foods.” Distributed
2 by: Big Lots Stores, Inc. P.O. Box 28523 Columbus, OH 43228; UPC:411010983700;
3 Best By 07/22/18 11:39 (“GROUND CUMIN”).

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

6 58. GROUND CUMIN contains LEAD.

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

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

18 61. Plaintiff is informed, believes, and thereon alleges that between August 31, 2013 and the
19 present, each of the Defendants knowingly and intentionally exposed California
20 consumers and users of GROUND CUMIN, which Defendants manufactured,
21 distributed, or sold as mentioned above, to LEAD, without first providing any type of
22 clear and reasonable warning of such to the exposed persons before the time of
23 exposure. Defendants have distributed and sold GROUND CUMIN in California.
24 Defendants know and intend that California consumers will use GROUND CUMIN,
25 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

26 62. The principal routes of exposure were through ingestion, including direct (oral), hand to
27 mouth pathways, inhalation and trans-dermal absorption. Persons sustained exposures
28 by eating and consuming GROUND CUMIN, handling GROUND CUMIN without

1 wearing gloves or by touching bare skin or mucus membranes with gloves after handling
2 GROUND CUMIN, or through direct and indirect hand to mouth contact, hand to food
3 to mouth, direct contact to food then to mouth, hand to mucous membrane, or breathing
4 in particulate matter emanating from GROUND CUMIN, as well as through
5 environmental mediums that carry the LEAD once contained within the GROUND
6 CUMIN.

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

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

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

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

22 **THRID CAUSE OF ACTION**

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

27 **Ground Cinnamon II**

28 67. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
reference paragraphs 1 through 66 of this complaint as though fully set forth herein.

1 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Ground Cinnamon identified as “Spice Supreme®”;
3 “Pure Ground Cinnamon”; “Net Wt. 2-1/2 OZ (70 g)”; “Packed by Gel Spice Co., Inc.
4 Bayonne, NJ 07002”; “www.gelspice.com”; “Best By 11/30/18”; UPC: 076114380154
5 (“GROUND CINNAMON II”).

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

8 69. GROUND CINNAMON II contains LEAD.

9 70. Defendants knew or should have known that LEAD has been identified by the State of
10 California as a chemical known to cause cancer and developmental and reproductive
11 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
12 were also informed of the presence of LEAD in GROUND CINNAMON II within
13 Plaintiff’s notice of alleged violations further discussed above at Paragraph 30.

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

21 72. Plaintiff is informed, believes, and thereon alleges that between December 2, 2013 and
22 the present, each of the Defendants knowingly and intentionally exposed California
23 consumers and users of GROUND CINNAMON II, 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 CINNAMON II in
27 California. Defendants know and intend that California consumers will use GROUND
28

1 CINNAMON II, thereby exposing them to LEAD. Defendants thereby violated
2 Proposition 65.

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

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

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

22 76. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to LEAD from GROUND CINNAMON II,
24 pursuant to Health and Safety Code section 25249.7(b).

25 77. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
26 filing this Complaint.

1 **FOURTH CAUSE OF ACTION**

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

6 **Ground Sage**

7 78. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
8 reference paragraphs 1 through 77 of this complaint as though fully set forth herein.
9 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Ground Sage identified as “Spice Supreme”; Ground
11 Sage; Net Wt. 1.75oz or 50g; Packed by Gel Spice Co., Inc.; Bayonne, NJ 07002;
12 www.gelspice.com; UPC: 076114380314 (“GROUND SAGE”).

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

15 80. GROUND SAGE contains LEAD.

16 81. Defendants knew or should have known that LEAD has been identified by the State of
17 California as a chemical known to cause cancer and developmental and reproductive
18 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
19 were also informed of the presence of LEAD in GROUND SAGE within Plaintiff’s
20 notice of alleged violations further discussed above at Paragraph 31.

21 82. Plaintiff’s allegations regarding GROUND SAGE concerns “[c]onsumer products
22 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
23 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
24 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
25 *25602(b)*. GROUND CINNAMON II are consumer products, and, as mentioned herein,
26 exposures to LEAD took place as a result of such normal and foreseeable use.

27 83. Plaintiff is informed, believes, and thereon alleges that between December 19, 2013 and
28 the present, each of the Defendants knowingly and intentionally exposed California
consumers and users of GROUND SAGE, which Defendants manufactured, distributed,

1 or sold as mentioned above, to LEAD, without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

3 Defendants have distributed and sold GROUND SAGE in California. Defendants know
4 and intend that California consumers will use GROUND SAGE, thereby exposing them
5 to LEAD. Defendants thereby violated Proposition 65.

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

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

22 86. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
24 violations alleged herein will continue to occur into the future.

25 87. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to LEAD from GROUND SAGE, pursuant to
27 Health and Safety Code section 25249.7(b).

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

3 **FIFTH CAUSE OF ACTION**

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

8 **Ground Cloves**

9 88. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
10 reference paragraphs 1 through 87 of this complaint as though fully set forth herein.
11 Each of the Defendants alleged in this cause of action is, and at all times mentioned
12 herein was, a manufacturer, distributor, promoter, or retailer of Ground Cloves identified
13 as “Fresh Finds™”; “Ground Cloves”; “Net Wt. 1.5 oz (43g)”; “Distributed by: Big Lots
14 Stores, Inc. P.O. Box 28523, Columbus, OH 43228-0523”; “PACKED IN THE USA”;
15 “V#1009056”; “ITEM#01140”; 481026011407; “BEST BY 08/15/19 13:58”
16 (“GROUND CLOVES”).

17 89. The scope of the Fifth Cause of Action as to GROUND CLOVES is limited to the
18 specific UPC: 481026011407 and the “BEST BY 08/15/19 13:58 designation.

19 90. GROUND CLOVES contains LEAD.

20 91. Defendants knew or should have known that LEAD has been identified by the State of
21 California as a chemical known to cause cancer and developmental and reproductive
22 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
23 were also informed of the presence of LEAD in GROUND CLOVES within Plaintiff's
24 notice of alleged violations further discussed above at Paragraph 32.

25 92. Plaintiff's allegations regarding GROUND CLOVES concerns “[c]onsumer products
26 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
27 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
28 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*

1 25602(b). GROUND CLOVES are consumer products, and, as mentioned herein,
2 exposures to LEAD took place as a result of such normal and foreseeable use.

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

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

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

1 96. 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 97. 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 CLOVES,
6 pursuant to Health and Safety Code section 25249.7(b).

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

9
10 **SIXTH CAUSE OF ACTION**

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

15 **Poultry Seasoning**

16 99. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 98 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 Poultry Seasoning
20 identified as “Fresh Finds™”; “Poultry Seasoning”; “Net Wt. 2.5 oz (71g)”;
21 “INGREDIENTS: SAGE, THYME, SALT, OREGANO, GROUND MUSTARD,
22 BASIL, RED PEPPER AND BLACK PEPPER”; “Distributed by: Big Lots Stores, Inc.
23 P.O. Box 28523, Columbus, OH 43228-0523”; “PACKED IN THE USA”;
24 “V#1009056”; “ITEM#FFPOULTRY”; 481008969009; “BEST BY 05/19/19 04:06”
25 (“POULTRY SEASONING”).

26 100. The scope of the Sixth Cause of Action as to POULTRY SEASONING is limited
27 to the specific UPC: 481008969009 and the “BEST BY 05/19/19 04:06” designation.

28 101. POULTRY SEASONING contains LEAD.

102. 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

1 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
2 Defendants were also informed of the presence of LEAD in POULTRY SEASONING
3 within Plaintiff's notice of alleged violations further discussed above at Paragraph 33.

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

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

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

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

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

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

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

17 **SEVENTH CAUSE OF ACTION**

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

22 **Garlic Powder**

23 110. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
24 reference paragraphs 1 through 109 of this complaint as though fully set forth herein.
25 Each of the Defendants alleged in this cause of action is, and at all times mentioned
26 herein was, a manufacturer, distributor, promoter, or retailer of Garlic Powder identified
27 as “Gel®”; “GARLIC POWDER”; “NET WT. 14 oz (397g)”; “BEST BY 07/25/19
28 11:04”; “PACKED IN THE USA BY GEL SPICE CO., INC. BAYONNE, NJ 07002”;
“www.gelspice.com”; 076114800362 (“GARLIC POWDER”).

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

3 112. GARLIC POWDER contains LEAD.

4 113. 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 GARLIC POWDER within
8 Plaintiff's notice of alleged violations further discussed above at Paragraph 34.

9 114. Plaintiff's allegations regarding GARLIC POWDER 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)*. GARLIC POWDER are consumer products, and, as mentioned
14 herein, exposures to LEAD took place as a result of such normal and foreseeable use.

15 115. Plaintiff is informed, believes, and thereon alleges that between March 7, 2014
16 and the present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of GARLIC POWDER, 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 GARLIC POWDER in California.
21 Defendants know and intend that California consumers will use GARLIC POWDER,
22 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

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

1 or breathing in particulate matter emanating from GARLIC POWDER, as well as
2 through environmental mediums that carry the LEAD once contained within the
3 GARLIC POWDER.

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

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

14 119. 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 GARLIC POWDER, pursuant
16 to Health and Safety Code section 25249.7(b).

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

19 **EIGHTH CAUSE OF ACTION**

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

23 **Ground Turmeric**

24 121. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
25 reference paragraphs 1 through 120 of this complaint as though fully set forth herein.
26 Each of the Defendants alleged in this cause of action is, and at all times mentioned
27 herein was, a manufacturer, distributor, promoter, or retailer of Ground Turmeric
28 identified as "MARKET PANTRY™"; "GROUND TURMERIC"; "NET WT 0.95 OZ

1 (27g)”; “BEST BY 07JUL2019 09:45”; “DISTRIBUTED BY TARGET
2 CORPORATION MINNEAPOLIS, MN 55403”; “PRODUCT OF INDIA”; “TM &
3 ©2016 Target Brands, Inc.”; “Shop Target.com”; 261021103R03 C-000275-01-075;
4 085239211038 (“GROUND TURMERIC”).

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

7 123. GROUND TURMERIC contains LEAD.

8 124. Defendants knew or should have known that LEAD has been identified by the
9 State of California as a chemical known to cause cancer and developmental and
10 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
11 Defendants were also informed of the presence of LEAD in GROUND TURMERIC
12 within Plaintiff's notice of alleged violations further discussed above at Paragraph 35.

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

19 126. Plaintiff is informed, believes, and thereon alleges that between March 14, 2014
20 and the present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of GROUND TURMERIC, which Defendants manufactured,
22 distributed, or sold as mentioned above, to LEAD, without first providing any type of
23 clear and reasonable warning of such to the exposed persons before the time of
24 exposure. Defendants have distributed and sold GROUND TURMERIC in California.
25 Defendants know and intend that California consumers will use GROUND
26 TURMERIC, thereby exposing them to LEAD. Defendants thereby violated Proposition
27 65.
28

1 127. 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 TURMERIC, handling
4 GROUND TURMERIC without wearing gloves or by touching bare skin or mucus
5 membranes with gloves after handling GROUND TURMERIC, or through direct and
6 indirect hand to mouth contact, hand to food to mouth, direct contact to food then to
7 mouth, hand to mucous membrane, or breathing in particulate matter emanating from
8 GROUND TURMERIC, as well as through environmental mediums that carry the
9 LEAD once contained within the GROUND TURMERIC.

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

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

20 130. 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 TURMERIC,
22 pursuant to Health and Safety Code section 25249.7(b).

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

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1 **NINTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against SPICE CO., and DOES 81-90**
3 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**
4 **1986 (Health & Safety Code, §§ 25249.5, et seq.))**

5 **Ground Cinnamon III**

6 132. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 131 of this complaint as though fully set forth herein.

8 Each of the Defendants alleged in this cause of action is, and at all times mentioned
9 herein was, a manufacturer, distributor, promoter, or retailer of Ground Cinnamon
10 identified as “Spice Supreme”; “GROUND CINNAMON”; “Net Wt 5-1/4 oz (148g)”;
11 “Ingredients: Cinnamon”; “Packed by Gel Spice Co., Inc. Bayonne, NJ 07002”; UPC 0
12 76114 33004 3” (“GROUND CINNAMON III”).

13 133. The scope of the Ninth Cause of Action as to GROUND CINNAMON III is
14 limited to the specific UPC: 076114330043 and the Best By 12/12/20 00.28 designation.

15 134. GROUND CINNAMON III contains LEAD.

16 135. Defendants knew or should have known that LEAD has been identified by the
17 State of California as a chemical known to cause cancer and developmental and
18 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
19 Defendants were also informed of the presence of LEAD in GROUND CINNAMON III
20 within Plaintiff's notice of alleged violations further discussed above at Paragraph 36.

21 136. Plaintiff's allegations regarding GROUND CINNAMON III concerns
22 “[c]onsumer products exposure[s],” which “is an exposure that results from a person’s
23 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
24 consumer good, or any exposure that results from receiving a consumer service.” *Cal.*
25 *Code Regs.* tit. 27, § 25602(b). GROUND CINNAMON III are consumer products, and,
26 as mentioned herein, exposures to LEAD took place as a result of such normal and
27 foreseeable use.

28 137. Plaintiff is informed, believes, and thereon alleges that between April 13, 2015
and the present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of GROUND CINNAMON III, which Defendants manufactured,
2 distributed, or sold as mentioned above, to LEAD, without first providing any type of
3 clear and reasonable warning of such to the exposed persons before the time of
4 exposure. Defendants have distributed and sold GROUND CINNAMON III in
5 California. Defendants know and intend that California consumers will use GROUND
6 CINNAMON III, thereby exposing them to LEAD. Defendants thereby violated
7 Proposition 65.

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

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

25 140. Plaintiff is informed, believes, and thereon alleges that each violation of
26 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and
27 believes that the violations alleged herein will continue to occur into the future.
28

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

4 142. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein
5 prior to filing this Complaint.

6
7 **TENTH CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against SPICE CO. and DOES 91-100**
9 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**
10 **1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

11 **Ground Cinnamon IV**

12 143. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
13 reference paragraphs 1 through 142 of this complaint as though fully set forth herein.
14 Each of the Defendants alleged in this cause of action is, and at all times mentioned
15 herein was, a manufacturer, distributor, promoter, or retailer of Ground Cinnamon
16 identified as “Market Pantry”; “Ground Cinnamon”; “Net Wt 4.1 oz (117g)”;
17 “Distributed by Target Corporation”; “C-000275-01-075;” “261 02 1106 R02”; “UPC 0
18 85239 21106 9”; “Product of Indonesia, Vietnam” (“GROUND CINNAMON IV”).

19 a. The scope of the Tenth Cause of Action as to GROUND CINNAMON IV is
20 limited to the specific UPC: 0 85239 21106 9 and the Best By 7/30/22 17:07
21 designation.

22 144. GROUND CINNAMON IV contains LEAD.

23 145. Defendants knew or should have known that LEAD has been identified by the
24 State of California as a chemical known to cause cancer and developmental and
25 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
26 Defendants were also informed of the presence of LEAD in GROUND CINNAMON IV
27 within Plaintiff’s notice of alleged violations further discussed above at Paragraph 37.

28 146. Plaintiff’s allegations regarding GROUND CINNAMON IV concerns
“[c]onsumer products exposure[s],” which “is an exposure that results from a person’s

1 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
2 consumer good, or any exposure that results from receiving a consumer service.” *Cal.*
3 *Code Regs.* tit. 27, § 25602(b). GROUND CINNAMON IV are consumer products, and,
4 as mentioned herein, exposures to LEAD took place as a result of such normal and
5 foreseeable use.

6 147. Plaintiff is informed, believes, and thereon alleges that between August 18, 2017
7 and the present, each of the Defendants knowingly and intentionally exposed California
8 consumers and users of GROUND CINNAMON IV, which Defendants manufactured,
9 distributed, or sold as mentioned above, to LEAD, without first providing any type of
10 clear and reasonable warning of such to the exposed persons before the time of
11 exposure. Defendants have distributed and sold GROUND CINNAMON IV in
12 California. Defendants know and intend that California consumers will use GROUND
13 CINNAMON IV, thereby exposing them to LEAD. Defendants thereby violated
14 Proposition 65.

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

24 149. Plaintiff is informed, believes, and thereon alleges that each of Defendants’
25 violations of Proposition 65 as to GROUND CINNAMON IV have been ongoing and
26 continuous to the date of the signing of this complaint, as Defendants engaged and
27 continue to engage in conduct which violates Health and Safety Code section 25249.6,
28 including the manufacture, distribution, promotion, and sale of GROUND CINNAMON

1 IV, so that a separate and distinct violation of Proposition 65 occurred each and every
2 time a person was exposed to LEAD by GROUND CINNAMON IV as mentioned
3 herein.

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

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

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

12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

19
20
21 Dated: January 19, 2021

YEROUSHALMI & YEROUSHALMI

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24 _____
25 Reuben Yeroushalmi
26 Attorneys for Plaintiff,
27 Consumer Advocacy Group, Inc.
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