

COPY

1 Reuben Yeroushalmi (SBN 193981)

2 Ben Yeroushalmi (SBN 232540)

3 Peter T. Sato (SBN 238486)

YEROUSHALMI & YEROUSHALMI

4 An Association of Independent Law Corporations

9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: 310.623.1926

7 Facsimile: 310.623.1930

8 Attorneys for Plaintiff,

9 Consumer Advocacy Group, Inc.

UNRECORDED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 03 2017

Clara M. ... Clerk
... Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

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

14 Plaintiff,

15 v.

16 RANI FOODS, LP, a business entity form
17 unknown; RANI FOODS, INC., a California
18 Corporation; SUPER MERCADO LATINO
19 MARKET, a business entity form unknown;
20 RACING LLC, a business entity form
21 unknown; and DOES 1-10;

22 Defendants.

CASE NO.

BC 6 5 2 7 1 8

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
24 Defendants RANI FOODS, LP, RANI FOODS, INC., SUPER MERCADO LATINO MARKET,
25 RACING LLC, and DOES 1-10 as follows:

26 **THE PARTIES**

- 27 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
28 organization qualified to do business in the State of California. CAG is a person within
the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code section 25249.7, subdivision (d).

3 2. Defendant RANI FOODS, LP (“RANI LP”) is a business entity form unknown, doing
4 business in the State of California at all relevant times herein.

5 3. Defendant RANI FOODS, INC. (“RANI FOODS”) is a California Corporation, doing
6 business in the State of California at all relevant times herein.

7 4. Defendant SUPER MERCADO LATINO MARKET (“SUPER MERCADO”) is a
8 business entity form unknown, doing business in the State of California at all relevant
9 times herein.

10 5. Defendant RACING LLC (“RACING”) is a business entity form unknown, doing
11 business in the State of California at all relevant times herein.

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

18 7. At all times mentioned herein, the term “Defendants” includes RANI LP, RANI
19 FOODS, SUPER MERCADO, RACING, and DOES 1-10.

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

22 9. Upon information and belief, at all times relevant to this action, each of the Defendants,
23 including DOES 1-10, was an agent, servant, or employee of each of the other
24 Defendants. In conducting the activities alleged in this Complaint, each of the
25 Defendants was acting within the course and scope of this agency, service, or
26 employment, and was acting with the consent, permission, and authorization of each of
27 the other Defendants. All actions of each of the Defendants alleged in this Complaint
28 were ratified and approved by every other Defendant or their officers or managing

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
2 the alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

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

21 13. Venue is proper in the County of Los Angeles because one or more of the instances of
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
23 because Defendants conducted, and continue to conduct, business in the County of Los
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

26 14. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures
28 to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

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

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

18 17. Proposition 65 provides that any person "violating or threatening to violate" the statute
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
20 25249.7. "Threaten to violate" means "to create a condition in which there is a
21 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 18. Plaintiff identified certain practices of manufacturers and distributors of products
25 bearing Lead and Lead Compounds ("LEAD") of exposing, knowingly and
26 intentionally, persons in California to the Proposition 65-listed chemicals of such
27 products without first providing clear and reasonable warnings of such to the exposed
28

1 persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged
2 in such practice.

3 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals
4 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).
5 Lead is known to the State to cause developmental toxicity, female reproductive toxicity,
6 and male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
7 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to the
8 State to cause reproductive toxicity, Lead became fully subject to Proposition 65 warning
9 requirements and discharge prohibitions.

10 20. On October 1, 1992, the Governor of California added Lead and lead compounds to the
11 list of chemicals known to the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(b)).
12 Lead and lead compounds is known to the State to cause cancer. Pursuant to Health and
13 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Lead
14 and lead compounds to the list of chemicals known to the State to cause cancer, Lead and
15 lead compounds became fully subject to Proposition 65 warning requirements and
16 discharge prohibitions.

17 **SATISFACTION OF PRIOR NOTICE**

18 21. On or about September 16, 2016, Plaintiff served notice of alleged violations of Health
19 and Safety Code section 25249.6, concerning consumer products exposures, subject to a
20 private action to RANI LP, RANI FOODS, SUPER MERCADO, RACING, and to the
21 California Attorney General, County District Attorneys, and City Attorneys for each city
22 containing a population of at least 750,000 people in whose jurisdictions the violations
23 allegedly occurred, concerning the product Yellow Ginger Ground Turmeric containing
24 LEAD.

25 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
26 products involved, the likelihood that such products would cause users to suffer
27 significant exposures to LEAD, and the corporate structure of each of the Defendants.
28

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

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

13 25. Plaintiff is commencing this action more than sixty (60) days from the dates that
14 Plaintiff gave notices of the alleged violation to RANI LP, RANI FOODS, SUPER
15 MERCADO, RACING, and the public prosecutors referenced in Paragraph 21.

16 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
17 any applicable district attorney or city attorney has commenced and is diligently
18 prosecuting an action against the Defendants.

19
20 **FIRST CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against RANI LP, RANI FOODS,**
22 **SUPER MERCADO, RACING, and DOES 1-10 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
26 **Yellow Ginger Ground Turmeric**

27 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
28 reference paragraphs 1 through 26 of this complaint as though fully set forth herein.
Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Yellow Ginger Ground Turmeric, which includes but
is not limited to, "West INDIAN Curry in a Hurry"; "Turmeric Yellow Ginger Ground";

1 "100% Natural"; "Ingredients: Turmeric"; "Distributed by Racing LLC Los Angeles,
2 CA 90044 310-997-6606"; UPC:680901194758 ("TURMERIC").

3 28. TURMERIC contain LEAD.

4 29. Defendants knew or should have known that LEAD has been identified by the State of
5 California as a chemical known to cause cancer and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of LEAD in TURMERIC within Plaintiff's notice of alleged violations
8 further discussed above at Paragraph 21.

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

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

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

1 emanating from TURMERIC, as well as through environmental mediums that carry the
2 LEAD once contained within the TURMERIC.

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

10 34. 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 35. 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 TURMERIC, pursuant to
15 Health and Safety Code section 25249.7(b).

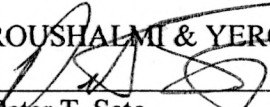
16 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
17 filing this Complaint.

18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

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

25 Dated: March 3, 2017

26 YEROUSHALMI & YEROUSHALMI
27 BY: 
28 Peter T. Sato
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.