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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 VALU MART CO., a California
19 Corporation; and DOES 1-20;

20 Defendants.

21 CASE NO. BC679776

Dept 72

22 FIRST AMENDED COMPLAINT FOR
23 PENALTY AND INJUNCTION

24 Violation of Proposition 65, the Safe
25 Drinking Water and Toxic Enforcement
26 Act of 1986 (*Health & Safety Code*, §
27 25249.5, *et seq.*)

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

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
Defendants VALU MART CO., SOOFER CO., INC., ROYAL ITEMS INC., ROYAL DELUXE
ACCESSORIES, LLC., BUY LOW MARKET CORP., K V MART CO., MERCADO LATINO
INC., and DOES 1-20 as follows:

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an 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

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Superior Court of California
County of Los Angeles

FEB 02 2018

Sherri R. Carter, Executive Officer/Clerk
By: Marietta Robinson, Deputy

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

2. Defendant VALU MART CO. ("VALU MART"), is a California Corporation doing business in the State of California at all relevant times herein.
3. Defendant SOOFER CO. INC ("SOOFER"), is a California Corporation doing business in the State of California at all relevant times herein.
4. Defendant K.V. MART CO. ("KV MART"), is a California Corporation doing business in the State of California at all relevant times herein.
5. Defendant BUY LOW MARKET CORP ("BUY-LOW"), is a California Corporation doing business in the State of California at all relevant times herein.
6. Defendant MERCADO LATINO INC. ("MERCADO"), is a California Corporation doing business in the State of California at all relevant times herein.
7. Defendant ROYAL ITEMS INC. ("ROYAL INC"), is a California Corporation doing business in the State of California at all relevant times herein.
8. Defendant ROYAL DELUX ACCESSORIES, LLC ("ROYAL LLC"), is a California Corporation doing business in the State of California at all relevant times herein.
9. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
10. At all times mentioned herein, the term "Defendants" includes VALU MART, SOOFER, KV MART, BUY-LOW, MERCADO. ROYAL INC, ROYAL LLC and DOES 1-20.
11. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
12. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other

1 Defendants. In conducting the activities alleged in this Complaint, each of the
2 Defendants was acting within the course and scope of this agency, service, or
3 employment, and was acting with the consent, permission, and authorization of each of
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint
5 were ratified and approved by every other Defendant or their officers or managing agents.
6 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
7 wrongful conduct of each of the other Defendants.

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

12 **JURISDICTION**

13
14 14. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
15 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
16 those given by statute to other trial courts. This Court has jurisdiction over this action
17 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
18 violations of Proposition 65 in any Court of competent jurisdiction.

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

27 16. Venue is proper in the County of Los Angeles because one or more of the instances of
28 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or

1 because Defendants conducted, and continue to conduct, business in the County of Los
2 Angeles with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

4 17. In 1986, California voters approved an initiative to address growing concerns about
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
10 from contamination, to allow consumers to make informed choices about the products
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see
12 fit.

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

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

24 20. Proposition 65 provides that any person “violating or threatening to violate” the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
26 “Threaten to violate” means “to create a condition in which there is a substantial
27 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).
28

Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

21. On December 2, 2005, the Governor of California added DBP to the list of chemicals known to the State to cause developmental, female, and male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DBP to the list of chemicals known to the State to cause reproductive toxicity, DBP became fully subject to Proposition 65 warning requirements and discharge prohibitions.

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

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

24. Plaintiff identified certain practices of manufacturers and distributors of products bearing Di-n-Butyl Phthalate, also known as Dibutyl Phthalate (“DBP”), and Lead and Lead Compounds (“LEAD”) of exposing, knowingly and intentionally, persons in California to the Proposition 65-listed chemicals of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

SATISFACTION OF PRIOR NOTICE

1 25. On or about January 3, 2017 Plaintiff gave notice of alleged violations of Health and
2 Safety Code section 25249.6, concerning consumer products exposures subject to a
3 private action to VALU MART, ROYAL INC, ROYAL LLC, BUY-LOW, and to the
4 California Attorney General, County District Attorneys, and City Attorneys for each city
5 containing a population of at least 750,000 people in whose jurisdictions the violations
6 allegedly occurred, concerning the product Footwear, containing DBP.

7 26. On or about February 10, 2017, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer products exposures subject to a
9 private action to VALU MART, MERCADO and to the California Attorney General,
10 County District Attorneys, and City Attorneys for each city containing a population of at
11 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
12 the product Ground Sage, containing LEAD.

13 27. On or about February 10, 2017, Plaintiff gave notice of alleged violations of Health and
14 Safety Code section 25249.6, concerning consumer products exposures subject to a
15 private action to VALU MART, MERCADO and to the California Attorney General,
16 County District Attorneys, and City Attorneys for each city containing a population of at
17 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
18 the product Ground Ginger, containing LEAD.

19 28. On or about February 10, 2017, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures subject to a
21 private action to VALU MART, SOOFER, BUY-LOW, KV MART and to the California
22 Attorney General, County District Attorneys, and City Attorneys for each city containing
23 a population of at least 750,000 people in whose jurisdictions the violations allegedly
24 occurred, concerning the product Ginger Powder, containing LEAD.

25 29. On or about April 26, 2017, Plaintiff gave notice of alleged violations of Health and
26 Safety Code section 25249.6, concerning consumer products exposures subject to a
27 private action to VALU MART, SOOFER, BUY-LOW, KV MART and to the California
28 Attorney General, County District Attorneys, and City Attorneys for each city containing

1 a population of at least 750,000 people in whose jurisdictions the violations allegedly
2 occurred, concerning the product Whole Ginger, containing LEAD.

3 30. On or about April 26, 2017, Plaintiff gave notice of alleged violations of Health and
4 Safety Code section 25249.6, concerning consumer products exposures subject to a
5 private action to VALU MART, SOOFER, BUY-LOW, KV MART and to the California
6 Attorney General, County District Attorneys, and City Attorneys for each city containing
7 a population of at least 750,000 people in whose jurisdictions the violations allegedly
8 occurred, concerning the product Ground Clove, containing LEAD.

9 31. On or about April 26, 2017, Plaintiff gave notice of alleged violations of Health and
10 Safety Code section 25249.6, concerning consumer products exposures subject to a
11 private action to VALU MART, SOOFER, BUY-LOW, KV MART and to the California
12 Attorney General, County District Attorneys, and City Attorneys for each city containing
13 a population of at least 750,000 people in whose jurisdictions the violations allegedly
14 occurred, concerning the product Ground Anise, containing LEAD.

15 32. 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, DBP, and the corporate structure of each of the
18 Defendants.

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

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

35. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notices of the alleged violation to VALU MART, SOOFER, BUY-LOW, KV MART, MERCADO, ROYAL INC, ROYAL LLC and the public prosecutors referenced in Paragraph 25 to 31.

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

FIRST CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against VALU MART, ROYAL, INC, ROYAL, LLC, BUY-LOW and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

Children's Footwear with Polymer Straps

37. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 36 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 Children's Footwear with Polymer Straps, which includes but is not limited to "Comfortable High Wedge"; Size M 1/2 ; Item# AG8078; Yellow flip flop with plastic straps; soles decorated with flower patterns; "WARNING: CHOCKING HAZARD"; Made in China; UPC: 613153080784 ("FLIP FLOPS").

38. FLIP FLOPS contains DBP.

39. Defendants knew or should have known that DBP has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DBP in FLIP FLOPS within Plaintiff's notice of alleged violations further discussed above at Paragraph 25.

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

7 41. Plaintiff's allegations regarding FLIP FLOPS also concern Occupational Exposures,
8 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
9 *Code Regs.* tit. 27, § 25602(f). Exposures of DBP to Defendants' employees occurred
10 through the course of their employment in their employers' workplaces.

11 42. Plaintiff is informed, believes, and thereon alleges that between January 3, 2014, and the
12 present, each of the Defendants knowingly and intentionally exposed their employees,
13 California consumers of FLIP FLOPS, which Defendants manufactured, distributed, or
14 sold as mentioned above, to DBP without first providing any type of clear and reasonable
15 warning of such to the exposed persons before the time of exposure. Defendants have
16 distributed and sold FLIP FLOPS in California. Defendants know and intend that
17 California consumers will use and consume FLIP FLOPS, thereby exposing them to
18 DBP. Defendants thereby violated Proposition 65.

19 43. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
20 Persons sustain exposures by wearing and handling FLIP FLOPS without wearing gloves
21 or any other personal protective equipment, or by touching bare skin or mucous
22 membranes with gloves after handling FLIP FLOPS, as well as through direct and
23 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
24 matter dispersed from FLIP FLOPS. And as to Defendants' employees, employees may
25 be exposed to DBP in the course of their employment by handling, distributing, and
26 selling FLIP FLOPS.

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

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

6 45. 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 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
10 \$2,500.00 per day per individual exposure to DBP from FLIP FLOPS, pursuant to Health
11 and Safety Code section 25249.7(b).

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

14 **SECOND CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against VALU MARK, MERCADO**
16 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
17 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

18 **Ground Sage**

19 48. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 47 of this complaint as though fully set forth herein. Each
21 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
22 promoter, or retailer of Ground Sage, which includes but is not limited to “Milpas®”;
23 69¢; GROUND SAGE; SALVIA MOLIDO; NET WT.: 1/8 oz. (3.54g); This product
24 may be used as a flavor enhancer for cooking your meals; DISTRIBUTED BY: MILPAS
25 FOODS; 245 BALDWIN PARK BLVD. INDUSTRY, CA 91746; Phone 1-800-432-
26 7266; WWW.FARAON.COM; Note to the consumer: any questions regarding this
27 product, please phone or email us; UPC: 0 74734 62340 8; 5 ¼ X 4 ¼; 62340 (“SAGE”).

28 49. SAGE contains LEAD.

1 50. Defendants knew or should have known that LEAD has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of LEAD in SAGE within Plaintiff's notice of alleged violations further
5 discussed above at Paragraph 26.

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

12 52. Plaintiff is informed, believes, and thereon alleges that between February 10, 2014, and
13 the present, each of the Defendants knowingly and intentionally exposed their employees,
14 California consumers of SAGE, which Defendants manufactured, distributed, or sold as
15 mentioned above, to LEAD without first providing any type of clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed and sold SAGE in California. Defendants know and intend that California
18 consumers will use and consume SAGE, thereby exposing them to LEAD. Defendants
19 thereby violated Proposition 65.

20 53. The principal routes of exposure are through dermal contact, ingestion and inhalation.
21 Persons sustain exposures by eating and consuming SAGE, handling SAGE without
22 wearing gloves or any other personal protective equipment, or by touching bare skin or
23 mucous membranes with gloves after handling SAGE, as well as through direct and
24 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
25 matter dispersed from SAGE.

26 54. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to SAGE have been ongoing and continuous to the date of the signing
28 of this complaint, as Defendants engaged and continue to engage in conduct which

violates Health and Safety Code section 25249.6, including the manufacture, distribution, promotion, and sale of SAGE, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to lead by SAGE as mentioned herein.

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

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

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

THIRD CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against VALU MARK, MERCADO and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

Ground Ginger

58. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 57 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 Ground Ginger, which includes but is not limited “Milpas®”; 99¢; GROUND GINGER; JENGIBRE MOLIDO; NET WT.: 1 oz. (28.35g); Product of China; DISTRIBUTED BY: MILPAS FOODS 245 BALDWIN PARK BLVD. INDUSTRY, CA 91746; WWW.FARAON.COM; 074734622944; 5 ¼ X 4 ¼; 62294 (“GINGER”).

59. GINGER contains LEAD.

60. Defendants knew or should have known that LEAD has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of

1 the presence of LEAD in GINGER within Plaintiff's notice of alleged violations further
2 discussed above at Paragraph 27.

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

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

17 63. The principal routes of exposure are through dermal contact, ingestion and inhalation.
18 Persons sustain exposures by eating and consuming GINGER, handling GINGER
19 without wearing gloves or any other personal protective equipment, or by touching bare
20 skin or mucous membranes with gloves after handling GINGER, as well as through direct
21 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
22 particulate matter dispersed from GINGER.

23 64. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
24 Proposition 65 as to GINGER have been ongoing and continuous to the date of the
25 signing of this complaint, as Defendants engaged and continue to engage in conduct
26 which violates Health and Safety Code section 25249.6, including the manufacture,
27 distribution, promotion, and sale of GINGER, so that a separate and distinct violation of
28

1 Proposition 65 occurred each and every time a person was exposed to lead by GINGER
2 as mentioned herein.

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

6 66. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to lead from GINGER, pursuant to Health and
8 Safety Code section 25249.7(b).

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

11 **FOURTH CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against VALU MARK, SOOFER,**
13 **BUY-LOW, KV MART and DOES 1-20 for Violations of Proposition 65, The Safe**
14 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et***
***seq.*))**

15 **Ginger Powder**

16 68. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 67 of this complaint as though fully set forth herein. Each
18 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
19 promoter, or retailer of Ginger Powder, which includes but is not limited to Sadaf®;
20 POWDER GINGER; INGREDIENTS: GINGER POWDER; NET WT/POIDS NET 2
21 OZ (56g); 052851112562; For Mediterranean Recipes visit: www.sadaf.com; SADAF
22 FOODS, Los Angeles, California 90058, USA.; ® Sadaf is a registered trademark of
23 Soofer Co., Inc.; © Copyright Soofer Co, Inc. 2012; Packed in USA (“GINGER
24 POWDER”).

25 69. GINGER POWDER contains LEAD.

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

1 the presence of LEAD in GINGER POWDER within Plaintiff's notice of alleged
2 violations further discussed above at Paragraph 28.

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

10 72. Plaintiff is informed, believes, and thereon alleges that between February 10, 2014, and
11 the present, each of the Defendants knowingly and intentionally exposed their employees,
12 California consumers of GINGER POWDER, 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 exposure.
15 Defendants have distributed and sold GINGER POWDER in California. Defendants
16 know and intend that California consumers will use and consume GINGER POWDER,
17 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

18 73. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by eating and consuming GINGER POWDER, handling
20 GINGER POWDER without wearing gloves or any other personal protective equipment,
21 or by touching bare skin or mucous membranes with gloves after handling GINGER
22 POWDER, as well as through direct and indirect hand to mouth contact, hand to mucous
23 membrane, or breathing in particulate matter dispersed from GINGER POWDER.

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

1 and distinct violation of Proposition 65 occurred each and every time a person was
2 exposed to lead by GINGER POWDER as mentioned herein.

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

6 76. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to lead from GINGER POWDER, pursuant to
8 Health and Safety Code section 25249.7(b).

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

11 **FIFTH CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against VALU MARK, SOOFER, BUY-**
13 **LOW, KV MART and DOES 1-20 for Violations of Proposition 65, The Safe Drinking**
14 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

15 **Whole Ginger**

16 78. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
17 reference paragraphs 1 through 77 of this complaint as though fully set forth herein. Each
18 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
19 promoter, or retailer of Whole Ginger, which includes but is not limited to “Sadaf®”;
20 “Superior Quality Calidad Superior”; “Ginger Whole”; “www.Sadaf.com”; “Net Wt. 0.75
21 Oz. (21g)”; “Packed by: Sadaf Foods, Los Angeles, CA 90058 USA”; 171204X710;
22 052851212552 (“WHOLE GINGER”).

23 79. WHOLE GINGER contains LEAD.

24 80. Defendants knew or should have known that LEAD has been identified by the State of
25 California as a chemical known to cause cancer and reproductive toxicity and therefore
26 was subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of LEAD in WHOLE GINGER within Plaintiff's notice of alleged violations
28 further discussed above at Paragraph 29.

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

7 82. Plaintiff is informed, believes, and thereon alleges that between April 26, 2014, and the
8 present, each of the Defendants knowingly and intentionally exposed their employees,
9 California consumers of WHOLE GINGER, which Defendants manufactured,
10 distributed, or sold as mentioned above, to LEAD without first providing any type of
11 clear and reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold WHOLE GINGER in California. Defendants know
13 and intend that California consumers will use and consume WHOLE GINGER, thereby
14 exposing them to LEAD. Defendants thereby violated Proposition 65.

15 83. The principal routes of exposure are through dermal contact, ingestion and inhalation.
16 Persons sustain exposures by eating and consuming WHOLE GINGER, handling
17 WHOLE GINGER without wearing gloves or any other personal protective equipment,
18 or by touching bare skin or mucous membranes with gloves after handling WHOLE
19 GINGER, as well as through direct and indirect hand to mouth contact, hand to mucous
20 membrane, or breathing in particulate matter dispersed from WHOLE GINGER.

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

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

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

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

SIXTH CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against VALU MARK, SOOFER, BUY-LOW, KV MART and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

Ground Clove

88. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 87 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 Ground Clove, which includes but is not limited to “Sadaf®”; “Stay Fresh Resealable Bag”; “Quality You Can Trust”; “Ground Clove”; “ClouDe Girofle Moulou”; “Clavo Molido”; “Ingredients: Ground Clove”; “Net Wt/Poids Net 1.5 oz (42g)”; “For Mediterranean Recipes visit: www.Sadaf.com”; “Packed in USA”; 052851111411 (“GROUND CLOVE”).

89. GROUND CLOVE contains LEAD.

90. Defendants knew or should have known that LEAD has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of LEAD in GROUND CLOVE within Plaintiff's notice of alleged violations further discussed above at Paragraph 30.

91. Plaintiff's allegations regarding GROUND CLOVE concern “[c]onsumer products exposure[s],” which “is an exposure that results from a person's acquisition, purchase,

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

6 92. Plaintiff is informed, believes, and thereon alleges that between April 26, 2014, and the
7 present, each of the Defendants knowingly and intentionally exposed their employees,
8 California consumers of GROUND CLOVE, 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 exposure.
11 Defendants have distributed and sold GROUND CLOVE in California. Defendants
12 know and intend that California consumers will use and consume GROUND CLOVE,
13 thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

14 93. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by eating and consuming GROUND CLOVE, handling
16 GROUND CLOVE without wearing gloves or any other personal protective equipment,
17 or by touching bare skin or mucous membranes with gloves after handling GROUND
18 CLOVE, as well as through direct and indirect hand to mouth contact, hand to mucous
19 membrane, or breathing in particulate matter dispersed from GROUND CLOVE.

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

1 95. 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 96. 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 CLOVE, pursuant to
6 Health and Safety Code section 25249.7(b).

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

9 **SEVENTH CAUSE OF ACTION**

10 **(By CONSUMER ADVOCACY GROUP, INC. and against VALU MARK, SOOFER, BUY-
11 LOW, KV MART and DOES 1-20 for Violations of Proposition 65, The Safe Drinking
12 Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

12 **Ground Anise**

13 98. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
14 reference paragraphs 1 through 98 of this complaint as though fully set forth herein. Each
15 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
16 promoter, or retailer of Ground Anise, which includes but is not limited “Sadaf”; “Stay
17 Fresh Resealable Bag”; “Ground Anise Seeds”; “Anis Vert Moulu”; Quality You Can
18 Trust”; “Net Wt/Poids Net 4 oz (113g)”; “www.Sadaf.com”; “Sadaf Foods”;
19 052851110087 (“GROUND ANISE”).

20 99. GROUND ANISE contains LEAD.

21 100. Defendants knew or should have known that LEAD has been identified by the
22 State of California as a chemical known to cause cancer and reproductive toxicity and
23 therefore was subject to Proposition 65 warning requirements. Defendants were also
24 informed of the presence of LEAD in GROUND ANISE within Plaintiff's notice of
25 alleged violations further discussed above at Paragraph 31.

26 101. Plaintiff's allegations regarding GROUND ANISE concern “[c]onsumer products
27 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
28 storage, consumption, or other reasonably foreseeable use of a consumer good, or any

1 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
2 25602(b). GROUND ANISE is a consumer product, and, as mentioned herein, exposures
3 to lead took place as a result of such normal and foreseeable consumption and use.

4 102. Plaintiff is informed, believes, and thereon alleges that between April 26, 2014,
5 and the present, each of the Defendants knowingly and intentionally exposed their
6 employees, California consumers of GROUND ANISE, which Defendants manufactured,
7 distributed, or sold as mentioned above, to LEAD without first providing any type of
8 clear and reasonable warning of such to the exposed persons before the time of exposure.
9 Defendants have distributed and sold GROUND ANISE in California. Defendants know
10 and intend that California consumers will use and consume GROUND ANISE, thereby
11 exposing them to LEAD. Defendants thereby violated Proposition 65.

12 103. The principal routes of exposure are through dermal contact, ingestion and
13 inhalation. Persons sustain exposures by eating and consuming GROUND ANISE,
14 handling GROUND ANISE without wearing gloves or any other personal protective
15 equipment, or by touching bare skin or mucous membranes with gloves after handling
16 GROUND ANISE, as well as through direct and indirect hand to mouth contact, hand to
17 mucous membrane, or breathing in particulate matter dispersed from GROUND ANISE.

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

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

1 106. 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 ANISE, pursuant to
3 Health and Safety Code section 25249.7(b).

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

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13
14 Dated: February 2, 2018

YEROUSHALMI & YEROUSHLAMI

15
16 BY: 

17 Reuben Yeroushalmi
18 Peter T. Sato
19 Attorney for Plaintiff,
20 Consumer Advocacy Group, Inc.
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