

1 Reuben Yeroushalmi (SBN 193981)
Ben Yeroushalmi (SBN 232540)
2 Peter T. Sato (SBN 238486)
3 **YEROUSHALMI & YEROUSHALMI**
An Association of Independent Law Corporations
4 9100 Wilshire Boulevard, Suite 240W
Beverly Hills, California 90212
5 Telephone: 310.623.1926
Facsimile: 310.623.1930

ENDORSED
FILED
ALAMEDA COUNTY

APR 30 2018

SUE PESKO

6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 MARSHALLS OF CA, LLC, a Delaware
17 Limited Liability Company ; THE TJX
18 COMPANIES, INC., a Delaware
19 Corporation; T.J. MAXX OF CA, LLC, a
20 Delaware Limited Liability Company ;
21 MARSHALLS OF MA, INC., a
Massachusetts Corporation; MARMAXX
OPERATING CORP., a Delaware
Corporation and DOES 1-30;

22 Defendants.

CASE NO. **RG18902811**

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
24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
25 Defendants THE SPICE LAB, INC., DVC INDUSTRIES, INC., MARSHALLS OF CA, INC.,
26 THE TJX COMPANIES, INC., T.J. MAXX OF CA, LLC, MARSHALLS OF MA, INC.,
27 MARMAXX OPERATING CORP., and DOES 1-30 as follows:

28 **THE PARTIES**

- 1 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
2 organization qualified to do business in the State of California. CAG is a person within
3 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
4 as a private attorney general, brings this action in the public interest as defined under
5 Health and Safety Code section 25249.7, subdivision (d).
- 6 2. Defendant MARSHALLS OF CA, INC. (“MARSHALLS CA”) is a business entity form
7 unknown, doing business in the State of California at all relevant times herein.
- 8 3. Defendant THE TJX COMPANIES, INC. (“TJX”) is a Delaware Corporation, doing
9 business in the State of California at all relevant times herein.
- 10 4. Defendant T.J. MAXX OF CA, LLC, a Delaware Limited Liability Company (“TJ
11 MAXX”) is a Delaware Corporation, doing business in the State of California at all
12 relevant times herein.
- 13 5. Defendant MARSHALLS OF MA, INC. (“MARSHALLS MA”) is a Massachusetts
14 Domestic Profit Corporation, doing business in the State of California at all relevant
15 times herein.
- 16 6. Defendant MARMAXX OPERATING CORP., (“MARMAXX”) is a Delaware
17 Corporation, doing business in the State of California at all relevant times herein.
- 18 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
19 30, and therefore sues these defendants by such fictitious names. Plaintiff will amend
20 this complaint to allege their true names and capacities when ascertained. Plaintiff is
21 informed, believes, and thereon alleges that each fictitiously named defendant is
22 responsible in some manner for the occurrences herein alleged and the damages caused
23 thereby.
- 24 8. At all times mentioned herein, the term “Defendants” includes MARSHALLS CA, TJX,
25 TJ MAXX , MARSHALLS MA, MARMAXX and DOES 1-30.
- 26 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
27 times mentioned herein have conducted business within the State of California.
28

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

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

14 JURISDICTION

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

20 13. This Court has jurisdiction over Defendants named herein because Defendants either
21 reside or are located in this State or are foreign corporations authorized to do business in
22 California, are registered with the California Secretary of State, or who do sufficient
23 business in California, have sufficient minimum contacts with California, or otherwise
24 intentionally avail themselves of the markets within California through their
25 manufacture, distribution, promotion, marketing, or sale of their products within
26 California to render the exercise of jurisdiction by the California courts permissible
27 under traditional notions of fair play and substantial justice.
28

1 14. Venue is proper in the County of Alameda because one or more of the instances of
2 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
3 because Defendants conducted, and continue to conduct, business in the County of
4 Alameda with respect to the consumer product that is the subject of this action.

5 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

26 18. Proposition 65 provides that any person "violating or threatening to violate" the statute
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
28 25249.7. "Threaten to violate" means "to create a condition in which there is a

1 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
2 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
3 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

4 19. Plaintiff identified certain practices of manufacturers and distributors of products
5 bearing Lead and Lead compounds ("LEAD") of exposing, knowingly and intentionally,
6 persons in California to the Proposition 65-listed chemicals of such products without
7 first providing clear and reasonable warnings of such to the exposed persons prior to the
8 time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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

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

22 **SATISFACTION OF PRIOR NOTICE**

23 22. On or about September 6, 2017, Plaintiff served a notice of alleged violations of Health
24 and Safety Code section 25249.6, concerning consumer products exposures, subject to a
25 private action to MARSHALLS CA, TJ MAXX, MARSHALLS MA and to the
26 California Attorney General, County District Attorneys, and City Attorneys for each city
27 containing a population of at least 750,000 people in whose jurisdictions the violations
28 allegedly occurred, concerning the product Dietary Supplements containing LEAD.

1 23. On or about September 6, 2017, Plaintiff served notice of alleged violations of Health
2 and Safety Code section 25249.6, concerning consumer products exposures, subject to a
3 private action to MARSHALLS CA, TJX, MARSHALLS MA, MARRMAXX, and to
4 the California Attorney General, County District Attorneys, and City Attorneys for each
5 city containing a population of at least 750,000 people in whose jurisdictions the
6 violations allegedly occurred, concerning the product Ground Cinnamon containing
7 LEAD.

8 24. On or about August 3, 2017, Plaintiff served notice of alleged violations of Health and
9 Safety Code section 25249.6, concerning consumer products exposures, subject to a
10 private action to MARSHALLS CA, TJX, MARSHALLS MA, MARRMAXX, and to
11 the California Attorney General, County District Attorneys, and City Attorneys for each
12 city containing a population of at least 750,000 people in whose jurisdictions the
13 violations allegedly occurred, concerning the product Ground Cinnamon containing
14 LEAD.

15 25. On or about October 17, 2017, Plaintiff served notice of alleged violations of Health and
16 Safety Code section 25249.6, concerning consumer products exposures, subject to a
17 private action to MARSHALLS CA, TJX, MARSHALLS MA, MARRMAXX, and to
18 the California Attorney General, County District Attorneys, and City Attorneys for each
19 city containing a population of at least 750,000 people in whose jurisdictions the
20 violations allegedly occurred, concerning the product Ground Cinnamon containing
21 LEAD.

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

25 27. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
26 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
27 for Plaintiff who executed the certificate had consulted with at least one person with
28 relevant and appropriate expertise who reviewed data regarding the exposures to LEAD,

1 the subject Proposition 65-listed chemicals of this action. Based on that information, the
2 attorney for Plaintiff who executed the Certificate of Merit believed there was a
3 reasonable and meritorious case for this private action. The attorney for Plaintiff
4 attached to the Certificate of Merit served on the Attorney General the confidential
5 factual information sufficient to establish the basis of the Certificate of Merit.

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

9 29. Plaintiff is commencing this action more than sixty (60) days from the dates that
10 Plaintiff gave notices of the alleged violation to TJ MAXX, MARSHALLS CA, TJX,
11 MASHALLS MA, MARMAXX and the public prosecutors referenced in Paragraph 22-
12 25.

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

16 FIRST CAUSE OF ACTION

17 (By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA, TJ MAXX,
18 MARSHALLS MA, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking
19 Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

20 Dietary Supplements

21 31. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
22 reference paragraphs 1 through 30 of this complaint as though fully set forth herein.
23 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
24 distributor, promoter, or retailer of Ground Cinnamon, identified as "Rx Select
25 Nutraceuticals"; Turmeric with Ginger"; "500 mg"; "Full Spectrum Botanicals";
26 "Clinically proven turmeric & ginger for bone & joint health & inflammatory support";
27 "90 Capsules"; "Dietary Supplement"; "Distributed by Windmill Health Products";
28 "035046097943" ("SUPPLEMENTS").

1 32. SUPPLEMENTS contain LEAD.

2 33. 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 reproductive toxicity and therefore
4 was subject to Proposition 65 warning requirements. Defendants were also informed of
5 the presence of LEAD in SUPPLEMENTS within Plaintiff's notice of alleged violations
6 further discussed above at Paragraph 22.

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

13 35. Plaintiff is informed, believes, and thereon alleges that between September, 2014, and
14 the present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of SUPPLEMENTS, which Defendants manufactured, distributed,
16 or sold as mentioned above, to LEAD, without first providing any type of clear and
17 reasonable warning of such to the exposed persons before the time of exposure.

18 Defendants have distributed and sold SUPPLEMENTS in California. Defendants know
19 and intend that California consumers will use SUPPLEMENTS thereby exposing them
20 to LEAD. Defendants thereby violated Proposition 65.

21
22 36. The principal routes of exposure with regard to SUPPLEMENTS are through a
23 multiplicity of sources including direct dietary (oral) ingestion, assorted hand to mouth
24 pathways, inhalation, and even trans-dermal absorption. Persons sustain exposures by
25 eating and consuming SUPPLEMENTS, handling SUPPLEMENTS without wearing
26 gloves or any other personal protective equipment, or by touching bare skin or mucous
27 membranes with or without gloves after handling SUPPLEMENTS, as well as through
28

1 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
2 particulate matter dispersed from SUPPLEMENTS.

3 37. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to SUPPLEMENTS have been ongoing and continuous to the date of
5 the 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 SUPPLEMENTS, so that a separate and distinct
8 violation of Proposition 65 occurred each and every time a person was exposed to
9 LEAD by SUPPLEMENTS as mentioned herein.

10 38. 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 39. 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 SUPPLEMENTS, pursuant to
15 Health and Safety Code section 25249.7(b).

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

18
19 **SECOND CAUSE OF ACTION**

20 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA, TJX,**
21 **MARSHALLS MA, MARMAXX and DOES 11-20 for Violations of Proposition 65, The**
22 **Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§**
23 **25249.5, et seq.))**

24 **Ground Cinnamon**

25 41. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
26 reference paragraphs 1 through 40 of this complaint as though fully set forth herein.
27 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Ground Cinnamon, identified as "The Spice Lab";

1 "Gourmet Spices"; "Ground Cinnamon"; "Premium No. 1"; "Net Wt. 1.8 oz"; "Batch
2 7282"; "Kosher/Processed in USA"; 8540-4040-234658- FLA3" ("CINNAMON").

3 42. CINNAMON contains LEAD.

4 43. 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 CINNAMON within Plaintiff's notice of alleged violations
8 further discussed above at Paragraph 23.

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

15 45. Plaintiff is informed, believes, and thereon alleges that between September 6, 2014, and
16 the present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of CINNAMON 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 CINNAMON in California. Defendants know and
21 intend that California consumers will use CINNAMON thereby exposing them to
22 LEAD. Defendants thereby violated Proposition 65.

23 46. The principal routes of exposure with regard to CINNAMON are and were through
24 ingestion, especially direct (oral) ingestion, hand to mouth pathways, inhalation, and
25

1 trans-dermal absorption. Persons sustain exposures primarily by eating and consuming
2 CINNAMON additionally by handling CINNAMON without wearing gloves or any
3 other personal protective equipment, or by touching bare skin or mucous membranes
4 with gloves after handling CINNAMON as well as through direct and indirect hand to
5 mouth contact, hand to mucous membrane, or even breathing in particulate matter
6 dispersed from CINNAMON.
7

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

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

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

21 50. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.
23

24 THIRD CAUSE OF ACTION

25 (By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA, TJX,
26 MARSHALLS MA, MARMAXX and DOES 21-25 for Violations of Proposition 65, The
27 Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§*
28 *25249.5, et seq.*))

Ground Cinnamon

1 51. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
2 reference paragraphs 1 through 50 of this complaint as though fully set forth herein.
3 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Ground Turmeric, identified as "Olde Thompson";
5 "Since 1944"; "Saigon Cinnamon"; "Net Wt. 5.2 oz (148.9g)";
6 "www.oldethompson.com"; "Packed in the USA"; "Ingredients: Saigon Cinnamon";
7 Item #1400-25; 85404040158024 FLC1
8 "Olde Thompson"; "Saigon Cinnamon"; "Net Wt. 5.2 oz (148.9g)";
9 "www.oldethompson.com"; "Packed in the USA"; "Ingredients: Saigon Cinnamon";
10 Item #1400-25; 85404040101109 FLC2 ("CINNAMON").

11 52. CINNAMON contains LEAD.

12 53. Defendants knew or should have known that LEAD has been identified by the State of
13 California as a chemical known to cause cancer and reproductive toxicity and therefore
14 was subject to Proposition 65 warning requirements. Defendants were also informed of
15 the presence of LEAD in CINNAMON within Plaintiff's notice of alleged violations
16 further discussed above at Paragraph 24.

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

23 55. Plaintiff is informed, believes, and thereon alleges that between August 3, 2014, and the
24 present, each of the Defendants knowingly and intentionally exposed California
25 consumers and users of CINNAMON, which Defendants manufactured, distributed, or
26 sold as mentioned above, to LEAD, without first providing any type of clear and
27 reasonable warning of such to the exposed persons before the time of exposure.

28 Defendants have distributed and sold CINNAMON in California. Defendants know and

1 intend that California consumers will use CINNAMON thereby exposing them to
2 LEAD. Defendants thereby violated Proposition 65.

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

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

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

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

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

26 **FOURTH CAUSE OF ACTION**

27 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA, TJX,**
28 **MARSHALLS MA, MARMAXX and DOES 26-30 for Violations of Proposition 65, The**

1 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
2 ***25249.5, et seq.*)**

3 **Ground Cinnamon**

- 4 61. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
5 reference paragraphs 1 through 50 of this complaint as though fully set forth herein.
6 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 distributor, promoter, or retailer of Ground Turmeric. identified as “Olde Thompson”;
8 “Since 1944”; “Saigon Cinnamon”; “Net Wt. 5.2 oz (148.9g)”; “The Spice Lab”;
9 “Gourmet Spices”; “Ground Cinnamon”; “Premium No. 1”; “Net Wt. 1.8 oz”; 1285-
10 017112426-00399-13-9; 8540-4040-208125 FLA10 (“CINNAMON”)
- 11 62. CINNAMON contains LEAD.
- 12 63. Defendants knew or should have known that LEAD has been identified by the State of
13 California as a chemical known to cause cancer and reproductive toxicity and therefore
14 was subject to Proposition 65 warning requirements. Defendants were also informed of
15 the presence of LEAD in CINNAMON within Plaintiff’s notice of alleged violations
16 further discussed above at Paragraph 25.
- 17 64. Plaintiff’s allegations regarding CINNAMON concerns “[c]onsumer products
18 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
21 *25602(b)*. CINNAMON are consumer products, and, as mentioned herein, exposures to
22 LEAD took place as a result of such normal and foreseeable use.
- 23 65. Plaintiff is informed, believes, and thereon alleges that between October 17, 2014, and
24 the present, each of the Defendants knowingly and intentionally exposed California
25 consumers and users of CINNAMON, which Defendants manufactured, distributed, or
26 sold as mentioned above, to LEAD, without first providing any type of clear and
27 reasonable warning of such to the exposed persons before the time of exposure.
28 Defendants have distributed and sold CINNAMON in California. Defendants know and

1 intend that California consumers will use CINNAMON thereby exposing them to
2 LEAD. Defendants thereby violated Proposition 65.

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

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

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

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

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

26
27 **PRAYER FOR RELIEF**

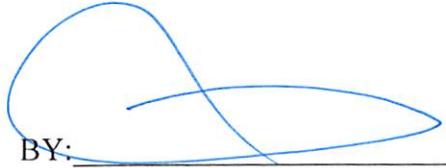
28 Plaintiff demands against each of the Defendants as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: April 27, 2018

YEROUSHALMI & YEROUSHALMI



BY: _____
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.