

AUG 29 2018

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By: Kristina Vargas, Deputy

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11 Consumer Advocacy Group, Inc.

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 COSTCO WHOLESALE CORPORATION.,
19 a Washington Corporation;
20 and DOES 1-10;

21 Defendants.

CASE NO.

BC 719887

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)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 Defendants COSTCO WHOLESALE CORPORATION and DOES 1-10 as follows:

24 **THE PARTIES**

- 25 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
26 organization qualified to do business in the State of California. CAG is a person within
27 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as
28 a private attorney general, brings this action in the public interest as defined under Health
and Safety Code section 25249.7, subdivision (d).

- 1 2. Defendant COSTCO WHOLESALE CORPORATION. ("COSTCO WHOLESALE") is a
2 Washington Corporation, doing business in the State of Washington at all relevant times
3 herein.
- 4 3. At all times mentioned herein, the term "Defendants" includes COSTCO WHOLESALE
5 CORPORATION and DOES 1-10.
- 6 4. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
7 times mentioned herein have conducted business within the State of California.
- 8 5. Upon information and belief, at all times relevant to this action, each of the Defendants,
9 including DOES 1-10, was an agent, servant, or employee of each of the other
10 Defendants. In conducting the activities alleged in this Complaint, each of the
11 Defendants was acting within the course and scope of this agency, service, or
12 employment, and was acting with the consent, permission, and authorization of each of
13 the other Defendants. All actions of each of the Defendants alleged in this Complaint
14 were ratified and approved by every other Defendant or their officers or managing agents.
15 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
16 wrongful conduct of each of the other Defendants.
- 17 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
18 Defendants was a person doing business within the meaning of Health and Safety Code
19 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
20 employees at all relevant times.

JURISDICTION

- 21 7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
22 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
23 those given by statute to other trial courts. This Court has jurisdiction over this action
24 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
25 violations of Proposition 65 in any Court of competent jurisdiction.
- 26 8. This Court has jurisdiction over Defendants named herein because Defendants either
27 reside or are located in this State or are foreign corporations authorized to do business in
28

1 California, are registered with the California Secretary of State, or who do sufficient
2 business in California, have sufficient minimum contacts with California, or otherwise
3 intentionally avail themselves of the markets within California through their manufacture,
4 distribution, promotion, marketing, or sale of their products within California to render
5 the exercise of jurisdiction by the California courts permissible under traditional notions
6 of fair play and substantial justice.

- 7 9. Venue is proper in the County of Los Angeles because one or more of the instances of
8 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
9 because Defendants conducted, and continue to conduct, business in the County of Los
10 Angeles with respect to the consumer product that is the subject of this action.

11 **BACKGROUND AND PRELIMINARY FACTS**

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

- 21 11. Proposition 65 requires the Governor of California to publish a list of chemicals known to
22 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
23 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
24 chemicals and chemical families. Proposition 65 imposes warning requirements and
25 other controls that apply to Proposition 65-listed chemicals.

- 26 12. All businesses with ten (10) or more employees that operate or sell products in California
27 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
28 from knowingly discharging Proposition 65-listed chemicals into sources of drinking

1 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
2 reasonable" warnings before exposing a person, knowingly and intentionally, to a
3 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

4 13. Proposition 65 provides that any person "violating or threatening to violate" the statute
5 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

6 "Threaten to violate" means "to create a condition in which there is a substantial
7 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

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

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

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

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SATISFACTION OF PRIOR NOTICE

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- 2 17. On or about April 20, 2018 Plaintiff gave notice of alleged violations of Health and
- 3 Safety Code section 25249.6, concerning consumer products exposures subject to a
- 4 private action to COSTCO WHOLESALE CORPORATION and to the California
- 5 Attorney General, County District Attorneys, and City Attorneys for each city containing
- 6 a population of at least 750,000 people in whose jurisdictions the violations allegedly
- 7 occurred, concerning the product GROUND TURMERIC, containing lead.
- 8 18. Before sending the notice of alleged violations, Plaintiff investigated the consumer
- 9 products involved, the likelihood that such products would cause users to suffer
- 10 significant exposures to LEAD and the corporate structure of each of the Defendants.
- 11 19. Plaintiff's notices of alleged violation each included a Certificate of Merit executed by
- 12 the attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
- 13 for Plaintiff who executed the certificate had consulted with at least one person with
- 14 relevant and appropriate expertise who reviewed data regarding the exposures to LEAD,
- 15 the subject Proposition 65-listed chemical of this action. Based on that information, the
- 16 attorney for Plaintiff who executed the Certificate of Merit believed there was a
- 17 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
- 18 to the Certificate of Merit served on the Attorney General the confidential factual
- 19 information sufficient to establish the basis of the Certificate of Merit.
- 20 20. Plaintiff's notice of alleged violations also included a Certificate of Service and a
- 21 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
- 22 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d).*
- 23 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
- 24 gave notice of the alleged violation to COSTCO WHOLESALE CORPORATION and
- 25 the public prosecutors referenced in Paragraph 17.
- 26 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
- 27 any applicable district attorney or city attorney has commenced and is diligently
- 28 prosecuting an action against the Defendants.

1 FIRST CAUSE OF ACTION

2 (By CONSUMER ADVOCACY GROUP, INC. and against COSTCO WHOLESALE
3 CORPORATION and DOES 1-10 for Violations of Proposition 65, The Safe Drinking
4 Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

4 GROUND SPICES

5 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
6 reference paragraphs 1 through 22 of this complaint as though fully set forth herein. Each
7 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
8 promoter, or retailer of GROUND TURMERIC, which includes "GROUND
9 TURMERIC"; "Distributed by Costco Wholesale Corporation P.O. Box 34535, Seattle,
10 WA 98124-1535, USA"; "1-800-774-2678 · www.costco.com"; "PACKED IN THE
11 USA Store away from direct sunlight in a cool, dry area."; "KIRKLAND Signature";
12 "ITM. / ART. 1157899"; UPC 096619365395; "GROUND TURMERIC" "NET WT 12
13 OZ (340 g)" ("GROUND TURMERIC").

14 24. "GROUND TURMERIC" contains LEAD.

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

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

27 27. Plaintiff is informed, believes, and thereon alleges that between April 20, 2015 and the
28 present, each of the Defendants knowingly and intentionally exposed their California

1 consumers of GROUND TURMERIC, which Defendants manufactured, distributed, or
2 sold as mentioned above, to LEAD without first providing any type of clear and
3 reasonable warning of such to the exposed persons before the time of exposure.

4 Defendants have distributed and sold GROUND TURMERIC in California. Defendants
5 know and intend that California consumers will use and consume GROUND
6 TURMERIC, thereby exposing them to LEAD. Defendants thereby violated Proposition
7 65.

8 28. The principal routes of exposure with regard to GROUND TURMERIC are and were
9 through ingestion, including hand to mouth pathways, inhalation, and trans-dermal
10 absorption. Persons sustain exposures primarily by eating and consuming GROUND
11 TURMERIC, and additionally by handling GROUND TURMERIC without wearing
12 gloves or any other personal protective equipment, or by touching bare skin or mucous
13 membranes with gloves after handling GROUND TURMERIC as well as through direct
14 and indirect hand to mouth contact, hand to mucous membrane, or even breathing in
15 particulate matter dispersed from GROUND TURMERIC.

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

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

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

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

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5 **PRAYER FOR RELIEF**

6 Plaintiff demands against each of the Defendants as follows:

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

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13 Dated: August 29, 2018

YEROUSHALMI & YEROUSHLAMI

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15 BY: 

16 Reuben Yeroushalmi
17 Attorney for Plaintiff,
18 Consumer Advocacy Group, Inc.