

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elizabeth Allen White

Reuben Yeroushalmi (SBN 193981)

Peter T. Sato (SBN 238486)

YEROUSHALMI & YEROUSHALMI

An Association of Independent Law Corporations

9100 Wilshire Boulevard, Suite 240W

Beverly Hills, California 90212

Telephone: (310) 623-1926

Facsimile: (310) 623-1930

Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

FOOD LAND MARKET, a Business Entity
Form Unknown;
FOODLAND MERCADO, a Business Entity
Form Unknown;
FAMILY FOODLAND MARKET, INC., a
Business Entity Form Unknown;
FOODLAND MARKET, INC., a New Jersey
Corporation;
RANCHERO LATIN FOODS, a Business
Entity Form Unknown;
ROJAS, INC., a Delaware Corporation;
ROJAS FORWARDING COMPANY, INC.,
a Business Entity Form Unknown;
ISLENO DISTRIBUTION CO., a Business
Entity Form Unknown;
DALLO & CO., INC., a California
Corporation;
LUPAG CORPORATION; a Business Entity
Form Unknown;
and DOES 1-40;

Defendants.

CASE NO. **19STCV18754**

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)

1
2 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges four causes of action against
3 defendants FOOD LAND MARKET, FOODLAND MERCADO, FAMILY FOODLAND
4 MARKET, INC., FOODLAND MARKET, INC., RANCHERO LATIN FOODS, ROJAS, INC.,
5 ROJAS FORWARDING COMPANY, INC., ISLENO DISTRIBUTION CO., DALLO & CO.,
6 INC., LUPAG CORPORATION, and DOES 1-40 as follows:

7
8 **THE PARTIES**

- 9 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
10 organization qualified to do business in the State of California. CAG is a person within
11 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
12 as a private attorney general, brings this action in the public interest as defined under
13 Health and Safety Code section 25249.7, subdivision (d).
- 14 2. Defendant FOOD LAND MARKET ("FL MARKET") is a Business Entity Form
15 Unknown, and doing business in the State of California at all relevant times herein.
- 16 3. Defendant FOODLAND MERCADO ("FL MERCADO") is a Business Entity Form
17 Unknown, and doing business in the State of California at all relevant times herein.
- 18 4. Defendant FAMILY FOODLAND MARKET, INC. ("FFL MARKET") is a Business
19 Entity Form Unknown, and doing business in the State of California at all relevant times
20 herein.
- 21 5. Defendant FOODLAND MARKET, INC. ("FL INC.") is a New Jersey Corporation
22 qualified to do business in the state of New Jersey, and doing business in the State of
23 California at all relevant times herein.
- 24 6. Defendant RANCHERO LATIN FOODS ("RANCHERO") is a Business Entity Form
25 Unknown, and doing business in the State of California at all relevant times herein.
- 26
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- 1 7. Defendant ROJAS, INC. (“ROJAS”) is a Delaware Corporation qualified to do business
2 in the state of Delaware, and doing business in the State of California at all relevant times
3 herein.
- 4 8. Defendant ROJAS FORWARDING COMPANY, INC. (“RFC”) is a Business Entity
5 Form Unknown, and doing business in the State of California at all relevant times herein.
- 6 9. Defendant ISLENO DISTRIBUTION CO. (“ISLENO”) is a Business Entity Form
7 Unknown, and doing business in the State of California at all relevant times herein.
- 8 10. Defendant DALLO & CO., INC. (“DALLO”) is a California Corporation qualified to do
9 business and doing business in the State of California at all relevant times herein.
- 10 11. Defendant LUPAG CORPORATION (“LUPAG”) is a Business Entity Form Unknown,
11 and doing business in the State of California at all relevant times herein.
- 12 12. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-40,
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
14 complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the damages caused
17 thereby.
- 18 13. At all times mentioned herein, the term “Defendants” includes FL MARKET, FL
19 MERCADO, FFL MARKET, FL INC., RANCHERO, ROJAS, RFC, ISLENO, DALLO,
20 LUPAG, and DOES 1-40.
- 21 14. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 15. Upon information and belief, at all times relevant to this action, each of the Defendants,
24 including DOES 1-40, was an agent, servant, or employee of each of the other
25 Defendants. In conducting the activities alleged in this Complaint, each of the
26 Defendants was acting within the course and scope of this agency, service, or
27 employment, and was acting with the consent, permission, and authorization of each of
28

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing agents.
3 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
4 wrongful conduct of each of the other Defendants.

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

9
10 **JURISDICTION**

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

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

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

1
2 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

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

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

8 25. On October 1, 1992, the Governor of California added Lead and Lead Compounds to the
9 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
10 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
11 after addition of Lead and Lead Compounds to the list of chemicals known to the State to
12 cause cancer, Lead and Lead Compounds became fully subject to Proposition 65 warning
13 requirements and discharge prohibitions. On February 27, 1987, the Governor of
14 California added Lead and Lead Compounds to the list of chemicals known to the State
15 to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit. 27, § 27001(b)).
16 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
17 after addition of Lead and Lead Compounds to the list of chemicals known to the State to
18 cause reproductive and developmental toxicity, Lead and Lead Compounds became fully
19 subject to Proposition 65 warning requirements and discharge prohibitions.

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

26 27. On February 27, 1987, the Governor of California added Inorganic Arsenic Compounds
27 to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §
28

27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Inorganic Arsenic Compounds to the list of chemicals known to the State to cause cancer, Inorganic Arsenic Compounds became fully subject to Proposition 65 warning requirements and discharge prohibitions.

28. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list of chemicals known to the State to cause developmental toxicity (*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 Inorganic Arsenic Oxides to the list of chemicals known to the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject to Proposition 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

29. On or about August 29, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FL MARKET, FL MERCADO, RANCHERO, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Ground Oregano.

30. On or about October 2, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FL MARKET, FL MERCADO, RANCHERO, ROJAS, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Ground Oregano.

31. On or about October 2, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FL MARKET, FL MERCADO, RANCHERO, ROJAS, ISLENO, and to the California Attorney General, County District Attorneys, and City Attorneys for each

city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Curry Powder.

32. On or about October 29, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FL MARKET, FL MERCADO, RANCHERO, ROJAS, ISLENO, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Curry Powder.

33. On or about November 6, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FL MARKET, FL MERCADO, RANCHERO, ROJAS, RFC, ISLENO, DALLO, LUPAG, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Curry Powder.

34. On or about October 2, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FL MERCADO, FFL MARKET, FL INC., RANCHERO, ROJAS, ISLENO, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the products Ground Cinnamon and Ground Sage.

35. On or about November 6, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FL MERCADO, FFL MARKET, FL INC., ROJAS, RFC, ISLENO, DALLO, LUPAG, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in

1 whose jurisdictions the violations allegedly occurred, concerning the products Ground
2 Cinnamon and Ground Sage.

3 36. Before sending the notices of alleged violation, Plaintiff investigated the consumer
4 products involved, the likelihood that such products would cause users to suffer
5 significant exposures to Lead and Lead Compounds, Inorganic Arsenic Compounds, and
6 Inorganic Arsenic Oxides and the corporate structure of each of the Defendants.

7 37. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
8 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
9 Plaintiff who executed the certificate had consulted with at least one person with relevant
10 and appropriate expertise who reviewed data regarding the exposures to Lead and Lead
11 Compounds, Inorganic Arsenic Compounds, and Inorganic Arsenic Oxides, the subject
12 Proposition 65-listed chemical of this action. Based on that information, the attorney for
13 Plaintiff who executed the Certificate of Merit believed there was a reasonable and
14 meritorious case for this private action. The attorney for Plaintiff attached to the
15 Certificate of Merit served on the Attorney General the confidential factual information
16 sufficient to establish the basis of the Certificate of Merit.

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

20 39. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
21 gave notices of the alleged violations to FL MARKET, FL MERCADO, FFL MARKET,
22 FL INC., RANCHERO, ROJAS, RFC, ISLENO, DALLO, LUPAG, and the public
23 prosecutors referenced in Paragraphs 29-35.

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

1 **FIRST CAUSE OF ACTION**

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

6 **Ground Spices**

- 7 41. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
8 reference paragraphs 1 through 40 of this complaint as though fully set forth herein.
- 9 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Ground Oregano identified as “RANCHERO”
11 “GROUND OREGANO” “OREGANO MOLIDO” “89C” “NET WT. /PESO NETO 1
12 OZ. (28G)” “CHILES Y ESPECIAS DE ALTA CALIDAD” “P525525”
13 “DISTRIBUTED BY:/ DISTRIBUIDO POR: RANCHERO LATIN FOODS LOS
14 ANGELES, CA 90023 (323) 266-0231” “748397105358” (“Ground Oregano”).
- 15 43. Ground Oregano contains Inorganic Arsenic Compounds and Inorganic Arsenic Oxides.
- 16 44. Defendants knew or should have known that Inorganic Arsenic Compounds and
17 Inorganic Arsenic Oxides have been identified by the State of California as a chemical
18 known to cause cancer, reproductive toxicity, and developmental toxicity and therefore
19 was subject to Proposition 65 warning requirements. Defendants were also informed of
20 the presence of Inorganic Arsenic Compounds and Inorganic Arsenic Oxides in Ground
21 Oregano within Plaintiff's notice of alleged violations further discussed above at
22 Paragraphs 29 and 30.
- 23 45. Plaintiff's allegations regarding Ground Oregano concerns “[c]onsumer products
24 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
27 *25602(b)*. Ground Oregano is a consumer product, and, as mentioned herein, exposures

1 to Lead and Lead Compounds took place as a result of such normal and foreseeable
2 consumption and use.

3 46. Plaintiff is informed, believes, and thereon alleges that between August 29, 2015 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Ground Oregano, which Defendants manufactured, distributed, or
6 sold as mentioned above, to Inorganic Arsenic Compounds and Inorganic Arsenic Oxides
7 without first providing any type of clear and reasonable warning of such to the exposed
8 persons before the time of exposure. Defendants have distributed and sold Ground
9 Oregano in California. Defendants know and intend that California consumers will use
10 and consume Ground Oregano, thereby exposing them to Inorganic Arsenic Compounds
11 and Inorganic Arsenic Oxides. Defendants thereby violated Proposition 65.

12 47. The principal routes of exposure are through dermal contact, ingestion and inhalation.
13 Persons sustain exposures by eating and consuming the Ground Oregano, using and/or
14 handling the Ground Oregano without wearing gloves or by touching bare skin or
15 mucous membranes with or without gloves after handling Ground Oregano, as well as
16 direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal
17 absorption, or breathing in particulate matter emanating from the Ground Oregano during
18 use, as well as through environmental mediums that carry the Inorganic Arsenic
19 compounds and Inorganic Arsenic Oxides once contained within the Ground Oregano.

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

1 49. 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 50. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Inorganic Arsenic Compounds and
6 Inorganic Arsenic Oxides from Ground Oregano, pursuant to Health and Safety Code
7 section 25249.7(b).

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

10 **SECOND CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against FL MARKET, FL**
12 **MERCADO, FFL MARKET, FL INC., RANCHERO, ROJAS, RFC, ISLENO,**
13 **DALLO, LUPAG and DOES 11-20 for Violations of Proposition 65, The Safe**
14 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
15 **25249.5, *et seq.*))**

16 **Ground Spices**

17 52. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
18 reference paragraphs 1 through 51 of this complaint as though fully set forth herein.

19 53. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Curry Powder identified as “RANCHERO” “CURRY
21 POWDER” “89C” “NET WT. /PESO NETO 1 ¼ OZ. (35G)” “CHILES Y ESPECIAS
22 DE ALTA CALIDAD” “P525525” “DISTRIBUTED BY:/ DISTRIBUIDO POR:
23 RANCHERO LATIN FOODS LOS ANGELES, CA 90023 (323) 266-0231”
24 “748397103057” (“Curry Powder”).

25 54. Curry Powder contains Lead and Lead Compounds.

26 55. Defendants knew or should have known that Lead and Lead Compounds has been
27 identified by the State of California as a chemical known to cause cancer, reproductive
28 toxicity, and developmental toxicity and therefore was subject to Proposition 65 warning

requirements. Defendants were also informed of the presence of Lead and Lead Compounds in Curry Powder within Plaintiff's notice of alleged violations further discussed above at Paragraphs 31-33.

56. Plaintiff's allegations regarding Curry Powder concerns "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. Curry Powder is a consumer product, and, as mentioned herein, exposures to Lead and Lead Compounds took place as a result of such normal and foreseeable consumption and use.

57. Plaintiff is informed, believes, and thereon alleges that between October 2, 2015 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Curry Powder, which Defendants manufactured, distributed, or sold as mentioned above, to Lead and Lead Compounds, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Curry Powder in California. Defendants know and intend that California consumers will use and consume Curry Powder, thereby exposing them to Lead and Lead Compounds. Defendants thereby violated Proposition 65.

58. The principal routes of exposure are through dermal contact, ingestion and inhalation. Persons sustain exposures by eating and consuming the Curry Powder, using and/or handling the Curry Powder without wearing gloves or by touching bare skin or mucous membranes with or without gloves after handling Curry Powder, as well as direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating from the Curry Powder during use, as well as through environmental mediums that carry Lead and Lead Compounds once contained in the Curry Powder.

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

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

11 61. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to Lead and Lead Compounds from Curry
13 Powder, pursuant to Health and Safety Code section 25249.7(b).

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

16 **THIRD CAUSE OF ACTION**

17 **(By CONSUMER ADVOCACY GROUP, INC. and against FL MERCADO, FFL**
18 **MARKET, FL, INC., RANCHERO, ROJAS, RFC, ISLENO, DALLO, LUPAG and**
19 **DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
20 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

21 **Ground Spices**

22 63. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
23 reference paragraphs 1 through 62 of this complaint as though fully set forth herein.

24 64. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Ground Cinnamon identified as "RANCHERO;"
26 "GROUND CINNAMON;" "CANELA MOLIDA;" "CHILES Y ESPECIAS DE ALTA
27 CALIDAD;" "NET WT./PESO NETO 1 OZ (28G);" "P525575;" "DISTRIBUTED BY: /

1 DISTRIBUIDO POR: RANCHERO LATIN FOODS;" "7 48397 10230 2" ("Ground
2 Cinnamon").

3 65. Ground Cinnamon contains Lead and Lead Compounds.

4 66. Defendants knew or should have known that Lead and Lead Compounds have been
5 identified by the State of California as a chemical known to cause cancer, reproductive
6 toxicity, and developmental toxicity and therefore was subject to Proposition 65 warning
7 requirements. Defendants were also informed of the presence of Lead and Lead
8 Compounds in Ground Cinnamon within Plaintiff's notice of alleged violations further
9 discussed above at Paragraphs 34 and 35.

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

17 68. Plaintiff is informed, believes, and thereon alleges that between October 2, 2015 and the
18 present, each of the Defendants knowingly and intentionally exposed California
19 consumers and users of Ground Cinnamon, which Defendants manufactured, distributed,
20 or sold as mentioned above, to Lead and Lead Compounds without first providing any
21 type of clear and reasonable warning of such to the exposed persons before the time of
22 exposure. Defendants have distributed and sold Ground Cinnamon in California.
23 Defendants know and intend that California consumers will use and consume Ground
24 Cinnamon, thereby exposing them to Lead and Lead Compounds. Defendants thereby
25 violated Proposition 65.

26 69. The principal routes of exposure are through dermal contact, ingestion and inhalation.
27 Persons sustain exposures by eating and consuming the Ground Cinnamon, using and/or
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1 handling the Ground Cinnamon without wearing gloves or by touching bare skin or
2 mucous membranes with or without gloves after handling Ground Cinnamon, as well as
3 direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal
4 absorption, or breathing in particulate matter emanating from the Ground Cinnamon
5 during use, as well as through environmental mediums that carry the Lead and Lead
6 Compounds once contained within the Ground Cinnamon.

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against FL MERCADO, FFL**
3 **MARKET, FL, INC., RANCHERO, ROJAS, RFC, ISLENO, DALLO, LUPAG and**
4 **DOES 31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
5 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

6 **Ground Spices**

7 74. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
8 reference paragraphs 1 through 73 of this complaint as though fully set forth herein.

9 75. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Ground Sage identified as “RANCHERO;” “SAGE;”
11 “SALVIA;” “CHILES Y ESPECIAS DE ALTA CALIDAD;” “NET WT./PESO NETO
12 ¼ OZ (7G);” “P525575; “DISTRIBUTED BY: / DISTRIBUIDO POR: RANCHERO
13 LATIN FOODS;” “7 48397 10089 6” (“Ground Sage”).

14 76. Ground Sage contains Lead and Lead Compounds, Inorganic Arsenic Compounds, and
15 Inorganic Arsenic Oxides.

16 77. Defendants knew or should have known that Lead and Lead Compounds, Inorganic
17 Arsenic Compounds, and Inorganic Arsenic Oxides have been identified by the State of
18 California as a chemical known to cause cancer, reproductive toxicity, and developmental
19 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
20 were also informed of the presence of Lead and Lead Compounds, Inorganic Arsenic
21 Compounds, and Inorganic Arsenic Oxides in Ground Sage within Plaintiff's notice of
22 alleged violations further discussed above at Paragraphs 34 and 35.

23 78. Plaintiff's allegations regarding Ground Sage concerns “[c]onsumer products
24 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
27 25602(b). Ground Sage is a consumer product, and, as mentioned herein, exposures to
28

1 Lead and Lead Compounds, Inorganic Arsenic Compounds, and Inorganic Arsenic
2 Oxides took place as a result of such normal and foreseeable consumption and use.

3 79. Plaintiff is informed, believes, and thereon alleges that between October 2, 2015 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Ground Sage, which Defendants manufactured, distributed, or
6 sold as mentioned above, to Lead and Lead Compounds, Inorganic Arsenic Compounds,
7 and Inorganic Arsenic Oxides without first providing any type of clear and reasonable
8 warning of such to the exposed persons before the time of exposure. Defendants have
9 distributed and sold Ground Sage in California. Defendants know and intend that
10 California consumers will use and consume Ground Sage, thereby exposing them to Lead
11 and Lead Compounds, Inorganic Arsenic Compounds, and Inorganic Arsenic Oxides.
12 Defendants thereby violated Proposition 65.

13 80. The principal routes of exposure are through dermal contact, ingestion and inhalation.
14 Persons sustain exposures by eating and consuming the Ground Sage, using and/or
15 handling the Ground Sage without wearing gloves or by touching bare skin or mucous
16 membranes with or without gloves after handling Ground Sage, as well as direct and
17 indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or
18 breathing in particulate matter emanating from the Ground Sage during use, as well as
19 through environmental mediums that carry the Lead and Lead Compounds, Inorganic
20 Arsenic Compounds, and Inorganic Arsenic Oxides once contained within the Ground
21 Sage.

22 81. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
23 Proposition 65 as to Ground Sage have been ongoing and continuous, as Defendants
24 engaged and continue to engage in conduct which violates Health and Safety Code
25 section 25249.6, including the manufacture, distribution, promotion, and sale of Ground
26 Sage, so that a separate and distinct violation of Proposition 65 occurred each and every
27

1 time a person was exposed to Lead and Lead Compounds, Inorganic Arsenic
2 Compounds, and Inorganic Arsenic Oxides by Ground Sage as mentioned herein.

3 82. 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 83. 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 and Lead Compounds, Inorganic
8 Arsenic Compounds, and Inorganic Arsenic Oxides from Ground Sage, pursuant to
9 Health and Safety Code section 25249.7(b).

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

12
13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

20
21
22 Dated: May 30,, 2019

YEROUSHALMI & YEROUSHALMI

23
24 BY: 

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