

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: William Fahey

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

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

15 Plaintiff,

16 v.

17 SUPER CENTER CONCEPTS, INC., a  
18 California Corporation,  
19 CABRERA DISTRIBUTION, INC. a  
20 California Corporation,  
21 and DOES 1-10,

22 Defendants.

CASE NO. 19STCV24224

COMPLAINT FOR PENALTY AND  
INJUNCTION

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

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

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
24 defendants SUPER CENTER CONCEPTS, INC., CABRERA DISTRIBUTION, INC., and  
25 DOES 1-10 as follows:

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## 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 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 SUPER CENTER CONCEPTS, INC. ("SUPER CENTER") is a California Corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Defendant CABRERA DISTRIBUTION, INC. ("CABRERA") is a California Corporation, qualified to do business and doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, 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.
5. At all times mentioned herein, the term "Defendants" includes SUPER CENTER, CABRERA, and DOES 1-10.
6. 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.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of

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 8. 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 **JURISDICTION**

- 10 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
12 those given by statute to other trial courts. This Court has jurisdiction over this action  
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 10. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their manufacture,  
20 distribution, promotion, marketing, or sale of their products within California to render  
21 the exercise of jurisdiction by the California courts permissible under traditional notions  
22 of fair play and substantial justice.
- 23 11. Venue is proper in the County of Los Angeles because one or more of the instances of  
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
25 because Defendants conducted, and continue to conduct, business in the County of Los  
26 Angeles with respect to the consumer product that is the subject of this action.

## BACKGROUND AND PRELIMINARY FACTS

12. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
13. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals and chemical families. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
14. All businesses with ten (10) or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable” warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
15. Proposition 65 provides that any person “violating or threatening to violate” the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7. “Threaten to violate” means “to create a condition in which there is a substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e). 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).

1 16. Plaintiff identified certain practices of manufacturers and distributors of Turmeric Dietary  
2 Supplements of exposing, knowingly and intentionally, persons in California to the  
3 Proposition 65-listed chemicals of such products without first providing clear and  
4 reasonable warnings of such to the exposed persons prior to the time of exposure.  
5 Plaintiff later discerned that Defendants engaged in such practice.

6 17. On October 1, 1992, the Governor of California added Lead and Lead Compounds  
7 ("Lead") to the list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit.*  
8 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,  
9 twenty (20) months after addition of Lead to the list of chemicals known to the State to  
10 cause cancer, Lead became fully subject to Proposition 65 warning requirements and  
11 discharge prohibitions.

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

19 **SATISFACTION OF PRIOR NOTICE**

20 19. On or about December 12, 2018, Plaintiff gave notice of alleged violations of Health and  
21 Safety Code section 25249.6, concerning consumer products exposures and occupational  
22 exposures, subject to a private action to SUPER CENTER, CABRERA and to the  
23 California Attorney General, County District Attorneys, and City Attorneys for each city  
24 containing a population of at least 750,000 people in whose jurisdictions the violations  
25 allegedly occurred, concerning the product Turmeric Dietary Supplements.

1 20. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to Lead, and the corporate structure of each of the Defendants.

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

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

16 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notices of the alleged violations to SUPER CENTER, CABRERA and the public  
18 prosecutors referenced in Paragraph 19.

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

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against SUPER CENTER,  
3 CABRERA, 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*  
5 *seq.*))

6 **Dietary Supplements**

- 7 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
8 reference paragraphs 1 through 24 of this Complaint as though fully set forth herein.
- 9 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
10 distributor, promoter, or retailer of Turmeric Dietary Supplements identified as  
11 "LAURA'S;" "CURCUMA TURMERIC;" "INGREDIENTES NATURALES;"  
12 "NATURAL INGREDIENTS;" "SUPLEMENTO ALIMENTICIO;" "DIETARY  
13 SUPPLEMENT;" "CONT. NET. 227.2 G / NET WT. 8 OZ;" "BEST BY 9 17 20;"  
14 "DISTRIBUTED BY: CABRERA DISTRIBUTION. INC.;" "0 19962 33670 6"  
15 ("Turmeric").
- 16 27. The scope of the First Cause of Action as to Turmeric is limited to the specific UPC  
17 Number #01996233670 6, Best Before "9/17/2020" and the Cont. Net. 227.2 G / Net Wt.  
18 8 Oz.
- 19 28. Turmeric contains Lead.
- 20 29. Defendants knew or should have known that Lead has been identified by the State of  
21 California as a chemical known to cause cancer, developmental and reproductive toxicity  
22 and therefore was subject to Proposition 65 warning requirements. Defendants were also  
23 informed of the presence of Lead in Turmeric within Plaintiff's notice of alleged  
24 violations further discussed above at Paragraph 19.
- 25 30. Plaintiff's allegations regarding Turmeric concerns "[c]onsumer products exposure[s],"  
26 which "is an exposure that results from a person's acquisition, purchase, storage,  
27 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
28 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

1 Turmeric is a consumer product, and, as mentioned herein, exposures to lead took place  
2 as a result of such normal and foreseeable consumption and use.

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

11 32. The principal routes of exposure are and were through ingestion, especially direct (oral)  
12 ingestion, inhalation, and trans-dermal absorption. Persons sustain exposures primarily  
13 by eating and consuming Turmeric, and additionally by handling Turmeric without  
14 wearing gloves or any other personal protective equipment, or by touching bare skin or  
15 mucous membranes with gloves after handling Turmeric as well as through direct and  
16 indirect hand to mouth contact, hand to mucous membrane, or even breathing in  
17 particulate matter dispersed from Turmeric.

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

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



35. 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 Turmeric, pursuant to Health and Safety Code section 25249.7(b).

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

**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

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: July 10, 2019

YEROUSHALMI & YEROUSHALMI

BY: 

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.