

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: David Cowan

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9 CONSUMER ADVOCACY GROUP, INC.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 SANTA MAURA SPICE AND GARLIC
19 CO., INC., a California Corporation;
20 and DOES 1-20,

21 Defendants.

CASE NO. **20STCV40297**

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)

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23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
24 against defendants SANTA MAURA SPICE AND GARLIC CO., INC., and DOES 1-20 as
25 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 SANTA MAURA SPICE AND GARLIC CO., INC. (“SANTA MAURA”) is a California Corporation qualified to do business and doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term “Defendants” includes SANTA MAURA and DOES 1-20.
5. 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.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other 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 the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
2 alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

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

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

25 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

19 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
21 25249.7. "Threaten to violate" means "to create a condition in which there is a
22 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
23 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
24 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 15. Plaintiff identified certain practices by Defendants of exposing, knowingly and
26 intentionally, persons in California to Lead and Lead Compounds, Inorganic Arsenic
27 Compounds, and Inorganic Arsenic Oxides without first providing clear and reasonable
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1 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later
2 discerned that Defendants engaged in such practice.

3 16. On October 1, 1992 the Governor of California added Lead and Lead Compounds
4 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
5 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
6 twenty (20) months after addition of Lead to the list of chemicals known to the State to
7 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
8 discharge prohibitions.

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

16 18. On February 27, 1987 the Governor of California added Inorganic Arsenic Compounds
17 to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §
18 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
19 (20) months after addition of Inorganic Arsenic Compounds to the list of chemicals
20 known to the State to cause cancer, Inorganic Arsenic Compounds became fully subject
21 to Proposition 65 warning requirements and discharge prohibitions.

22 19. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
23 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
24 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
25 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
26 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
27 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
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1 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
2 Compounds and Inorganic Arsenic Oxides is hereinafter referred to as “Arsenic”.

3 **SATISFACTION OF PRIOR NOTICE**

4 20. Plaintiff served the following notices for alleged violations of Health and Safety Code
5 Section 25249.6, concerning consumer products exposures:

6 a. On or about July 15, 2019, Plaintiff gave notice of alleged violations of Health
7 and Safety Code Section 25249.6, concerning consumer products exposures
8 subject to a private action to SANTA MAURA and to the California Attorney
9 General, County District Attorneys, and City Attorneys for each city containing
10 a population of at least 750,000 people in whose jurisdictions the violations
11 allegedly occurred, concerning Ground Cinnamon.

12 b. On or about August 21, 2019, Plaintiff gave notice of alleged violations of
13 Health and Safety Code Section 25249.6, concerning consumer products
14 exposures subject to a private action to SANTA MAURA and to the California
15 Attorney General, County District Attorneys, and City Attorneys for each city
16 containing a population of at least 750,000 people in whose jurisdictions the
17 violations allegedly occurred, concerning Ground Anise.

18 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
19 products involved, the likelihood that such products would cause users to suffer
20 significant exposures to Lead, Inorganic Arsenic Compounds (“Arsenic”), Inorganic
21 Arsenic Oxides (“Arsenic”), and the corporate structure of each of the Defendants.

22 22. Plaintiff’s notices of alleged violation included Certificates of Merit executed by the
23 attorney for the noticing party, CAG. The Certificates of Merit stated that the attorney
24 for Plaintiff who executed the certificates had consulted with at least one person with
25 relevant and appropriate expertise who reviewed data regarding the exposures to Lead
26 and Arsenic, the subject Proposition 65-listed chemicals of this action. Based on that
27 information, the attorney for Plaintiff who executed the Certificates of Merit believed
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1 there was a reasonable and meritorious case for this private action. The attorney for
2 Plaintiff attached to the Certificates of Merit served on the Attorney General the
3 confidential factual information sufficient to establish the basis of the Certificate of
4 Merit.

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

8 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
9 gave notice of the alleged violations to SANTA MAURA, and the public prosecutors
10 referenced in Paragraph 20.

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

14 **FIRST CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against SANTA MAURA and**
16 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
17 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

18 **Ground Spices**

19 26. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint
20 as though fully set forth herein.

21 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Cinnamon Ground ("Cinnamon"), identified as:
23 "Cinnamon Ground"; "Net Wgt 5 Lbs"; "Product of Indonesia"

24 a. The scope of this cause of action is limited to the specific lot number and/or
25 batch number of Cinnamon.

26 28. Cinnamon contains Lead.

27 29. Defendants knew or should have known that Lead has been identified by the State of
28 California as a chemical known to cause cancer and reproductive toxicity and therefore

1 was subject to Proposition 65 warning requirements. Defendants were also informed of
2 the presence of Lead in Cinnamon within Plaintiff's notice of alleged violations further
3 discussed above at Paragraph 20a.

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

10 31. Plaintiff is informed, believes, and thereon alleges that between July 15, 2016 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Cinnamon, which Defendants manufactured, distributed, or sold
13 as mentioned above, to Lead, without first providing any type of clear and reasonable
14 warning of such to the exposed persons before the time of exposure. Defendants have
15 distributed and sold Cinnamon in California. Defendants know and intend that
16 California consumers will use and consume Cinnamon, thereby exposing them to Lead.
17 Defendants thereby violated Proposition 65.

18 32. The principal routes of exposure are through ingestion especially direct (oral) ingestion,
19 inhalation and trans-dermal absorption. Persons sustain exposures by eating and
20 consuming Cinnamon and additionally by handling cinnamon without wearing gloves or
21 any other personal protective equipment, or by touching bare skin or mucous membranes
22 with gloves after handling Cinnamon, as well as through direct and indirect hand to
23 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
24 from Cinnamon.

25 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to Cinnamon have been ongoing and continuous, as Defendants
27 engaged and continue to engage in conduct which violates Health and Safety Code
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1 Section 25249.6, including the manufacture, distribution, promotion, and sale of
2 Cinnamon, so that a separate and distinct violation of Proposition 65 occurred each and
3 every time a person was exposed to Lead by Cinnamon as mentioned herein.

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

7 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
8 \$2,500.00 per day per individual exposure to Lead from Cinnamon, pursuant to Health
9 and Safety Code Section 25249.7(b).

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

12 **SECOND CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against SANTA MAURA and**
14 **DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
15 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

16 **Ground Spices II**

17 37. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 of this complaint
18 as though fully set forth herein.

19 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Ground Anise (“Anise”), identified as: “ANISE
21 GROUND;” “NET WGT 1.LBS;” “PRODUCT OF TURKEY;” “SPICE BODEGA;”
22 “1244 E. 8th St. Los Angeles, CA 90021”.

23 a. The scope of this cause of action is limited to the specific lot number and/or
24 batch number of Anise.

25 39. Anise contains Lead and Arsenic.

26 40. Defendants knew or should have known that Lead and Arsenic have been identified by
27 the State of California as a chemical known to cause cancer and reproductive toxicity
28 and therefore were subject to Proposition 65 warning requirements. Defendants were

1 also informed of the presence of Lead and Arsenic in Anise within Plaintiff's notice of
2 alleged violations further discussed above at Paragraph 20b.

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

9 42. Plaintiff is informed, believes, and thereon alleges that between August 21, 2016 and the
10 present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Anise, which Defendants manufactured, distributed, or sold as
12 mentioned above, to Lead and Arsenic, without first providing any type of clear and
13 reasonable warning of such to the exposed persons before the time of exposure.
14 Defendants have distributed and sold Anise in California. Defendants know and intend
15 that California consumers will use and consume Anise, thereby exposing them to Lead
16 and Arsenic. Defendants thereby violated Proposition 65.

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

23 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
24 Proposition 65 as to Anise have been ongoing and continuous, as Defendants engaged
25 and continue to engage in conduct which violates Health and Safety Code Section
26 25249.6, including the manufacture, distribution, promotion, and sale of Anise, so that a
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1 separate and distinct violation of Proposition 65 occurred each and every time a person
2 was exposed to Lead and Arsenic by Anise as mentioned herein.

3 45. 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 46. 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 Arsenic from Anise, pursuant to
8 Health and Safety Code Section 25249.7(b).

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

11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

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

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20 Dated: October 21, 2020

YEROUSHALMI & YEROUSHALMI*

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23 _____
24 Reuben Yeroushalmi
25 Attorneys for Plaintiff,
26 CONSUMER ADVOCACY GROUP, INC.