

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Teresa Beaudet

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8 CONSUMER ADVOCACY GROUP, INC.

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

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

14 Plaintiff,

15 v.

16 MOJAVE FOODS CORPORATION, a
17 Maryland Corporation,
18 SUPER CENTER CONCEPTS, INC., aka
19 Superior Grocers, a California Corporation,
and DOES 1-10,

20 Defendants.
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CASE NO.

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 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 defendants MOJAVE FOODS CORPORATION, SUPER CENTER CONCEPTS, INC. and
3 DOES 1-10 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code section 25249.7, subdivision (d).
- 10 2. Defendant MOJAVE FOODS CORPORATION (“MOJAVE”) is a Maryland
11 Corporation, doing business in the State of California at all relevant times herein.
- 12 3. Defendant SUPER CENTER CONCEPTS, INC., aka Superior Grocers (“SUPER
13 CENTER”) is a California Corporation, qualified to do business and doing business in the
14 State of California at all relevant times herein.
- 15 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
16 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
17 Complaint to allege their true names and capacities when ascertained. Plaintiff is
18 informed, believes, and thereon alleges that each fictitiously named defendant is
19 responsible in some manner for the occurrences herein alleged and the damages caused
20 thereby.
- 21 5. At all times mentioned herein, the term “Defendants” includes MOJAVE, and SUPER
22 CENTER, and DOES 1-10.
- 23 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
24 times mentioned herein have conducted business within the State of California.
- 25 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
26 including DOES 1-10, was an agent, servant, or employee of each of the other
27 Defendants. In conducting the activities alleged in this Complaint, each of the

1 Defendants was acting within the course and scope of this agency, service, or
2 employment, and was acting with the consent, permission, and authorization of each of
3 the other Defendants. All actions of each of the Defendants alleged in this Complaint
4 were ratified and approved by every other Defendant or their officers or managing agents.
5 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
6 wrongful conduct of each of the other Defendants.

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

11 **JURISDICTION**

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

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

- 25 11. Venue is proper in the County of Los Angeles because one or more of the instances of
26 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
27 because Defendants conducted, and continue to conduct, business in the County of Los

1 Angeles with respect to the consumer product that is the subject of this action.

2 **BACKGROUND AND PRELIMINARY FACTS**

3 12. 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 13. 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 14. 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 15. 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).
27 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,

1 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

2 16. Plaintiff identified certain practices of manufacturers and distributors of Oregano of
3 exposing, knowingly and intentionally, persons in California to Inorganic Arsenic
4 Compounds and Inorganic Arsenic Oxides of such products without first providing clear
5 and reasonable warnings of such to the exposed persons prior to the time of exposure.
6 Plaintiff later discerned that Defendants engaged in such practice.

7 17. On February 27, 1987, the Governor of California added Inorganic Arsenic Compounds
8 to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §
9 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
10 (20) months after addition of Inorganic Arsenic Compounds to the list of chemicals
11 known to the State to cause cancer, Inorganic Arsenic Compounds became fully subject
12 to Proposition 65 warning requirements and discharge prohibitions.

13 18. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list of
14 chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, §
15 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
16 female, and male reproductive toxicity. Pursuant to Health and Safety Code sections
17 25249.9 and 25249.10, twenty (20) months after addition of Inorganic Arsenic Oxides to
18 the list of chemicals known to the State to cause reproductive toxicity, Inorganic Arsenic
19 Oxides became fully subject to Proposition 65 warning requirements and discharge
20 prohibitions.

21 **SATISFACTION OF PRIOR NOTICE**

22 19. On or about August 26, 2019, Plaintiff gave notice of alleged violations of Health and
23 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
24 private action to MOJAVE, SUPER CENTER, and to the California Attorney General,
25 County District Attorneys, and City Attorneys for each city containing a population of at
26 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
27 the product Oregano.

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against MOJAVE, SUPER**
3 **CENTER, 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 **Ground Spices**

7 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint
8 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 Oregano, including but not limited “Mejor Calidad!
11 Sabor Preferido”; “El Guapo. Taste & Quality you can trust! Satisfaction Guaranteed”;
12 “Oregano”; “Net Wt 0.5 oz (14g); “Mojave Foods Corp. Los Angeles, CA 90040”;
13 “Packed in USA”; “L20342N”; “UPC 0 44989 20342 7” (“Oregano”)

14 27. The scope of the First Cause of Action as to Oregano is limited to the specific UPC
15 Number #044989203427, and the specific Lot Number "L20342N".

16 28. Oregano contains Arsenic.

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

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

28 31. Plaintiff is informed, believes, and thereon alleges that between August 26, 2016 and the
present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of Oregano, which Defendants manufactured, distributed, or sold as
2 mentioned above, to Arsenic, without first providing any type of clear and reasonable
3 warning of such to the exposed persons before the time of exposure. Defendants have
4 distributed and sold Oregano in California. Defendants know and intend that California
5 consumers will use and consume Oregano, thereby exposing them to Arsenic.

6 Defendants thereby violated Proposition 65.

7 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.

8 Persons sustain exposures by handling Oregano without wearing gloves or any other
9 personal protective equipment, or by touching bare skin or mucous membranes with
10 gloves after handling Oregano, as well as through direct and indirect hand to mouth
11 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
12 Oregano.

13 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
14 Proposition 65 as to Oregano have been ongoing and continuous, as Defendants engaged
15 and continue to engage in conduct which violates Health and Safety Code Section
16 25249.6, including the manufacture, distribution, promotion, and sale of Oregano, so that
17 a separate and distinct violation of Proposition 65 occurred each and every time a person
18 was exposed to Arsenic by Oregano as mentioned herein.

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

22 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to Arsenic from Oregano, pursuant to Health
24 and Safety Code Section 25249.7(b).

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

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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: October 31, 2019

YEROUSHALMI & YEROUSHALMI



BY: _____
Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.