

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Patricia Nieto

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 GREEN FARM MARKET, a Business Entity  
16 Form Unknown;  
and DOES 1-10,

17 Defendants.

CASE NO. **20STCV15823**

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 one cause of action against  
2 defendants GREEN FARM MARKET and DOES 1-10 as follows:

3 **THE PARTIES**

- 4 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an  
5 organization qualified to do business in the State of California. CAG is a person within  
6 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting  
7 as a private attorney general, brings this action in the public interest as defined under  
8 Health and Safety Code Section 25249.7, subdivision (d).
- 9 2. Defendant GREEN FARM MARKET (“GREEN FARM”) is a business entity form  
10 unknown, doing business in the State of California at all relevant times herein.
- 11 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-  
12 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
13 this Complaint to allege their true names and capacities when ascertained. Plaintiff is  
14 informed, believes, and thereon alleges that each fictitiously named defendant is  
15 responsible in some manner for the occurrences herein alleged and the damages caused  
16 thereby.
- 17 4. At all times mentioned herein, the term “Defendants” includes GREEN FARM, and  
18 DOES 1-10.
- 19 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
20 times mentioned herein have conducted business within the State of California.
- 21 6. Upon information and belief, at all times relevant to this action, the Defendants,  
22 including DOES 1-10, was an agent, servant, or employee of each of the other  
23 Defendant. In conducting the activities alleged in this Complaint, each of the  
24 Defendants was acting within the course and scope of this agency, service, or  
25 employment, and was acting with the consent, permission, and authorization of each of  
26 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
27 were ratified and approved by every other Defendant or their officers or managing  
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1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
2 the alleged wrongful conduct of each of the other Defendants.

- 3 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, the  
4 Defendant 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  
15 in 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  
23 and/or because Defendants conducted, and continue to conduct, business in the County  
24 of Los 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  
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1 to 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  
11 over 700 chemicals and chemical families. Proposition 65 imposes warning  
12 requirements and 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  
14 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
15 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of  
16 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear  
17 and 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* §  
23 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day  
24 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 15. Plaintiff identified certain practices of manufacturers and distributors of Ginger Powder  
26 of exposing, knowingly and intentionally, persons in California to Lead and Lead  
27 Compounds ("Lead") in such products 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 to the list of chemicals  
4 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to  
5 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after  
6 addition of Lead to the list of chemicals known to the State to cause cancer, Lead  
7 became fully subject to Proposition 65 warning requirements and discharge  
8 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 reproductive toxicity, Lead became fully subject to Proposition 65  
15 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 18. On or about February 12, 2020 Plaintiff gave notice of alleged violations of Health and  
18 Safety Code Section 25249.6, concerning consumer products exposures, subject to a  
19 private action to GREEN FARM and to the California Attorney General, County  
20 District Attorneys, and City Attorneys for each city containing a population of at least  
21 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
22 Ginger Powder.

23 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
24 products involved, the likelihood that such products would cause users to suffer  
25 significant exposures to Lead, and the corporate structure of each of the Defendants.

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

- 8 21. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
9 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
10 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 11 22. Plaintiff is commencing this action more than sixty (60) days from the dates that  
12 Plaintiff gave notice of the alleged violations to GREEN FARM, and the public  
13 prosecutors referenced in Paragraph 18.
- 14 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General,  
15 nor any applicable district attorney or city attorney has commenced and is diligently  
16 prosecuting an action against the Defendants.

17  
18 **FIRST CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against GREEN FARM, and**  
20 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
21 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

22 **Ground Spices**

- 23 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this  
24 complaint as though fully set forth herein.
- 25 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
26 distributor, promoter, or retailer of Ground Ginger ("Ginger"), identified as: "Ginger  
27 Powder"; "Bot Gung"; "Net Wt.: 3.5oz (100g.)"; "Distributed by: Tiao Peng Trading  
28 Inc."; "Product of Thailand"; "UPC 0 13412 23145 0"

1 a. The scope of this cause of action is limited to the specific lot number and/or  
2 batch number of Ginger

3 26. Ginger contains Lead.

4 27. Defendants knew or should have known that Lead has been identified by the State of  
5 California as a chemical known to cause cancer, developmental, and reproductive  
6 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants  
7 were also informed of the presence of Lead in Ginger within Plaintiff's notice of alleged  
8 violations further discussed above at Paragraph 18.

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

15 29. Plaintiff is informed, believes, and thereon alleges that between February 12, 2017 and  
16 the present, each of the Defendants knowingly and intentionally exposed California  
17 consumers and users of Ginger, which Defendants manufactured, distributed, or sold as  
18 mentioned above, to Lead, without first providing any type of clear and reasonable  
19 warning of such to the exposed persons before the time of exposure. Defendants have  
20 distributed and sold Ginger in California. Defendants know and intend that California  
21 consumers will use and consume Ginger, thereby exposing them to Lead. Defendants  
22 thereby violated Proposition 65.

23 30. The principal routes of exposure with regard to Ginger are and were through ingestion,  
24 especially direct (oral) ingestion, inhalation, and trans-dermal absorption. Persons  
25 sustain exposures primarily by eating and consuming Ginger, and additionally by  
26 handling Ginger without wearing gloves or any other personal protective equipment, or  
27 by touching bare skin or mucous membranes with gloves after handling Ginger as well  
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1 as through direct and indirect hand to mouth contact, hand to mucous membrane, or  
2 even breathing in particulate matter dispersed from Ginger during use, as well as  
3 through environmental mediums that carry the Lead once contained within the Ginger.

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

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

13 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Ginger, pursuant to Health and  
15 Safety Code Section 25249.7(b).

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

18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

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

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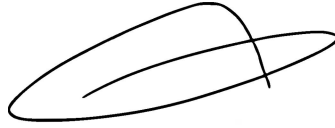
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1 Dated: April 24, 2020

YEROUSHALMI & YEROUSHALMI\*

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6 Reuben Yeroushalmi  
7 Attorneys for Plaintiff,  
8 CONSUMER ADVOCACY GROUP, INC.  
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