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8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 TRONG FOOD INTERNATIONAL, INC., a
17 California Corporation;
18 THOAI PHAT, INC. DBA DEL MAR
19 SUPERMARKET, a California Corporation;
20 and DOES 1-50,

21 Defendants.

CASE NO. **20STCV49941**

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)

22
23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges five (5) causes of action
24 against defendants TRONG FOOD INTERNATIONAL, INC.; THOAI PHAT, INC. DBA
25 DEL MAR SUPERMARKET, and DOES 1-50 as follows:

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 TRONG FOOD INTERNATIONAL, INC. (“TRONG”) is a California Corporation doing business in the State of California at all relevant times herein.
3. Defendant THOAI PHAT, INC. DBA DEL MAR SUPERMARKET (“THOAI”) is a California Corporation doing business in the State of California at all relevant times herein.
4. Defendant THOAI PHAT, INC. DBA DEL MAR SUPERMARKET (“THOAI”) is a California Corporation doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50, 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.
6. At all times mentioned herein, the term “Defendants” includes TRONG, THOAI, and DOES 1-50.
7. 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.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-50, 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

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

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

10 **JURISDICTION**

11 10. 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 11. 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
21 manufacture, distribution, promotion, marketing, or sale of their products within
22 California to render the exercise of jurisdiction by the California courts permissible
23 under traditional notions of fair play and substantial justice.

24 12. 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.

28

1 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

- 1 17. Plaintiff identified certain practices of exposing, knowingly and intentionally, persons in
2 California to Lead and Lead Compounds, Cadmium and Cadmium Compounds,
3 Inorganic Arsenic Compounds, and/or Inorganic Arsenic Oxides without first providing
4 clear and reasonable warnings of such to the exposed persons prior to the time of
5 exposure. Plaintiff later discerned that Defendants engaged in such practice.
- 6 18. 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 19. 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.*
14 tit. 27, § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
15 twenty (20) months after addition of Lead to the list of chemicals known to the State to
16 cause developmental and reproductive toxicity, Lead became fully subject to Proposition
17 65 warning requirements and discharge prohibitions.
- 18 20. On October 1, 1987 the Governor of California added Cadmium and Cadmium
19 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer
20 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
21 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
22 chemicals known to the State to cause cancer, Cadmium became fully subject to
23 Proposition 65 warning requirements and discharge prohibitions.
- 24 21. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
25 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
26 tit. 27, § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
27 twenty (20) months after addition of Cadmium to the list of chemicals known to the State
28

1 to cause developmental and reproductive toxicity, Cadmium became fully subject to
2 Proposition 65 warning requirements and discharge prohibitions.

3 22. On February 27, 1987 the Governor of California added Inorganic Arsenic Compounds
4 to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §
5 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
6 (20) months after addition of Inorganic Arsenic Compounds to the list of chemicals
7 known to the State to cause cancer, Inorganic Arsenic Compounds became fully subject
8 to Proposition 65 warning requirements and discharge prohibitions.

9 23. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
10 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
11 § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
12 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
13 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
14 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
15 Compounds and Inorganic Arsenic Oxides is hereinafter referred to as “Arsenic”.

16 **SATISFACTION OF PRIOR NOTICE**

17 24. Plaintiff served the following notices for alleged violations of Health and Safety Code
18 Section 25249.6, concerning consumer products exposures:

- 19 a. On or about March 18, 2020 Plaintiff gave notice of alleged violations of Health
20 and Safety Code Section 25249.6, concerning consumer products exposures
21 subject to a private action to TRONG, THOAI, and to the California Attorney
22 General, County District Attorneys, and City Attorneys for each city containing
23 a population of at least 750,000 people in whose jurisdictions the violations
24 allegedly occurred, concerning Curry Powder.
- 25 b. On or about May 18, 2020 Plaintiff gave notice of alleged violations of Health
26 and Safety Code Section 25249.6, concerning consumer products exposures
27 subject to a private action to TRONG and to the California Attorney General,

1 County District Attorneys, and City Attorneys for each city containing a
2 population of at least 750,000 people in whose jurisdictions the violations
3 allegedly occurred, concerning Curry Powder.

4 c. On or about March 28, 2020 Plaintiff gave notice of alleged violations of Health
5 and Safety Code Section 25249.6, concerning consumer products exposures
6 subject to a private action to TRONG and to the California Attorney General,
7 County District Attorneys, and City Attorneys for each city containing a
8 population of at least 750,000 people in whose jurisdictions the violations
9 allegedly occurred, concerning Oriental Beef Spices.

10 d. On or about July 7, 2020 Plaintiff gave notice of alleged violations of Health
11 and Safety Code Section 25249.6, concerning consumer products exposures
12 subject to a private action to TRONG, and to the California Attorney General,
13 County District Attorneys, and City Attorneys for each city containing a
14 population of at least 750,000 people in whose jurisdictions the violations
15 allegedly occurred, concerning Curry Powder.

16 e. On or about July 28, 2020 Plaintiff gave notice of alleged violations of Health
17 and Safety Code Section 25249.6, concerning consumer products exposures
18 subject to a private action to TRONG and to the California Attorney General,
19 County District Attorneys, and City Attorneys for each city containing a
20 population of at least 750,000 people in whose jurisdictions the violations
21 allegedly occurred, concerning Paprika Powder.

22 f. On or about August 18, 2020 Plaintiff gave notice of alleged violations of
23 Health and Safety Code Section 25249.6, concerning consumer products
24 exposures subject to a private action to TRONG and to the California Attorney
25 General, County District Attorneys, and City Attorneys for each city containing
26 a population of at least 750,000 people in whose jurisdictions the violations
27 allegedly occurred, concerning Paprika Powder.

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1 25. 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 Lead, Cadmium, and Arsenic, and the corporate structure of
4 each of the Defendants.

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

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

18 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
19 gave notice of the alleged violations to TRONG, THOAI, and the public prosecutors
20 referenced in Paragraph 24.

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

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25 //
26 //

1 **FIRST CAUSE OF ACTION**

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

5 **Curry Powder**

6 30. Plaintiff repeats and incorporates by reference paragraphs 1 through 29 of this complaint
7 as though fully set forth herein.

8 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Curry Powder (“Curry Powder I”), defined as: “CA
10 RI NI AN DO;” “KIM TU THAP;” “MADRAS CURRY POWDER;” “NET WT. /Poids
11 NET (16oz.) 453 grams;” “TRONG FOOD INTERNATIONAL 310 D. Center St. Santa
12 Ana, CA 92703;” “CSG-21;” “0 39606 00154 8”.

13 a. Cause of Action One is limited to the UPC Number 0 39606 001548 of Curry
14 Powder I.

15 32. Curry Powder I contains Lead.

16 33. Defendants knew or should have known that Lead has been identified by the State of
17 California as a chemical known to cause cancer and reproductive toxicity and therefore
18 was subject to Proposition 65 warning requirements. Defendants were also informed of
19 the presence of Lead in Curry Powder I within Plaintiff’s notice of alleged violations
20 further discussed above at Paragraph 24a.

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

27 35. Plaintiff is informed, believes, and thereon alleges that between March 18, 2017 and the
28 present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of Curry Powder I, which Defendants manufactured, distributed, or
2 sold as mentioned above, to Lead, without first providing any type of clear and
3 reasonable warning of such to the exposed persons before the time of exposure.

4 Defendants have distributed and sold Curry Powder I in California. Defendants know
5 and intend that California consumers will use and consume Curry Powder I, thereby
6 exposing them to Lead. Defendants thereby violated Proposition 65.

7 36. The principal routes of exposure are through dermal contact, ingestion and inhalation.
8 Persons sustain exposures by eating, mixing, or handling Curry Powder I without
9 wearing gloves or any other personal protective equipment, or by touching bare skin or
10 mucous membranes with gloves after handling Curry Powder I, as well as through direct
11 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
12 particulate matter emanating from Curry Powder I during use, as well as through
13 environmental mediums that carry the Lead once contained within the Curry Powder I.

14 37. Further, Plaintiff is informed, believes, and thereon alleges that TRONG knowingly
15 introduced Lead into the Curry Powder I; knowingly caused Lead to be created in the
16 Curry Powder I; covered, obscured, or altered a warning; received notice and warning
17 materials for the exposure from its upstream entities; and/or have actual knowledge of
18 the potential exposure to Lead from Curry Powder I requiring the warning

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

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

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1 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to Lead from Curry Powder I, pursuant to
3 Health and Safety Code Section 25249.7(b).

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

6
7 **SECOND CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against TRONG and DOES**
9 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
10 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

11 **Curry Powder**

12 42. Plaintiff repeats and incorporates by reference paragraphs 1 through 41 of this complaint
13 as though fully set forth herein.

14 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
15 distributor, promoter, or retailer of Curry Powder (“Curry Powder II”), defined as: “KIM
16 TU THAP;” “PYRAMIDE;” “TRONG FOOD INTERNATIONAL;” “Product of USA;”
17 “MADRAS CURRY POWDER;” “NET WT. / POIDS NET/ NETTOGEWICHT 4 OZ.
18 (113.4 GRAMS);” “A19;” “TRONG FOOD INTERNATIONAL SANTA ANA, CA
19 92703 (714) 550-0372;” www.spiceofvietnam.com; “0 39606 00156 2”.

20 a. Cause of Action Two is limited to the UPC Number 0 39606 001562 of Curry
21 Powder II.

22 44. Curry Powder II contains Lead.

23 45. Defendants knew or should have known that Lead has been identified by the State of
24 California as a chemical known to cause cancer and reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of Lead in Curry Powder II within Plaintiff’s notice of alleged violations
27 further discussed above at Paragraph 24b.

28 46. Plaintiff’s allegations regarding Curry Powder II concerns “[c]onsumer products
exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
2 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
3 25602(b). Curry Powder II is a consumer product, and, as mentioned herein, exposures
4 to Lead took place as a result of such normal and foreseeable consumption and use.

5 47. Plaintiff is informed, believes, and thereon alleges that between May 18, 2017 and the
6 present, each of the Defendants knowingly and intentionally exposed California
7 consumers and users of Curry Powder II, which Defendants manufactured, distributed, or
8 sold as mentioned above, to Lead, without first providing any type of clear and
9 reasonable warning of such to the exposed persons before the time of exposure.
10 Defendants have distributed and sold Curry Powder II in California. Defendants know
11 and intend that California consumers will use and consume Curry Powder II, thereby
12 exposing them to Lead. Defendants thereby violated Proposition 65.

13 48. The principal routes of exposure are through dermal contact, ingestion and inhalation.
14 Persons sustain exposures by eating, mixing, or handling Curry Powder II without
15 wearing gloves or any other personal protective equipment, or by touching bare skin or
16 mucous membranes with gloves after handling Curry Powder II, as well as through direct
17 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
18 particulate matter emanating from Curry Powder II during use, as well as through
19 environmental mediums that carry the Lead once contained within the Curry Powder II.

20 49. Further, Plaintiff is informed, believes, and thereon alleges that TRONG knowingly
21 introduced Lead into the Curry Powder II; knowingly caused Lead to be created in the
22 Curry Powder II; covered, obscured, or altered a warning; received notice and warning
23 materials for the exposure from its upstream entities; and/or have actual knowledge of
24 the potential exposure to Lead from Curry Powder II requiring the warning

25 50. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
26 Proposition 65 as to Curry Powder II have been ongoing and continuous, as Defendants
27 engaged and continue to engage in conduct which violates Health and Safety Code
28

1 Section 25249.6, including the manufacture, distribution, promotion, and sale of Curry
2 Powder II, so that a separate and distinct violation of Proposition 65 occurred each and
3 every time a person was exposed to Lead by Curry Powder II as mentioned herein.

4 51. 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 52. 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 Curry Powder II, pursuant to
9 Health and Safety Code Section 25249.7(b).

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

12 **THIRD CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against TRONG and DOES**
14 **21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
15 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

16 **Spices**

17 54. Plaintiff repeats and incorporates by reference paragraphs 1 through 53 of this complaint
18 as though fully set forth herein.

19 55. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Oriental Beef Spices (“Beef Spices”), defined as:
21 “KIM TU THAP;” “PYRAMIDE;” “GIA VI NAU BO KHO;” “ORIENTAL BEEF
22 SPICES ESPICE ORIENTAL DE BOEUF;” “TRONG FOOD INTERNATIONAL;”
23 “Product of USA;” “NET WT. / POIDS NET/ NETTOGEWICHT 2 OZ. (56.7
24 GRAMS);” “TRONG FOOD INTERNATIONAL www.spiceofvietnam.com; “0 39606
25 00112 8”.

26 a. Cause of Action Three is limited to the UPC Number 0 39606 001128 of Beef
27 Spices.

28 56. Beef Spices contains Arsenic.

1 57. Defendants knew or should have known that Arsenic has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of Arsenic in Beef Spices within Plaintiff's notice of alleged violations
5 further discussed above at Paragraph 24c.

6 58. Plaintiff's allegations regarding Beef Spices concerns "[c]onsumer products
7 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
8 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
9 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
10 *25602(b)*. Beef Spices are consumer products, and, as mentioned herein, exposures to
11 Arsenic took place as a result of such normal and foreseeable consumption and use.

12 59. Plaintiff is informed, believes, and thereon alleges that between May 28, 2017 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Beef Spices which Defendants manufactured, distributed, or sold
15 as mentioned above, to Arsenic, without first providing any type of clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed and sold Beef Spices in California. Defendants know and intend that
18 California consumers will use and consume Beef Spices, thereby exposing them to
19 Arsenic. Defendants thereby violated Proposition 65.

20 60. The principal routes of exposure are through dermal contact, ingestion and inhalation.
21 Persons sustain exposures by eating, mixing, or handling Beef Spices without wearing
22 gloves or any other personal protective equipment, or by touching bare skin or mucous
23 membranes with gloves after handling Beef Spices, as well as through direct and indirect
24 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter
25 emanating from Beef Spices during use, as well as through environmental mediums that
26 carry the Arsenic once contained within the Beef Spices.

- 1 61. Further, Plaintiff is informed, believes, and thereon alleges that TRONG knowingly
2 introduced Arsenic into the Beef Spices; knowingly caused Arsenic to be created in the
3 Beef Spices; covered, obscured, or altered a warning; received notice and warning
4 materials for the exposure from its upstream entities; and/or have actual knowledge of
5 the potential exposure to Arsenic from Beef Spices requiring the warning
- 6 62. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
7 Proposition 65 as to Beef Spices have been ongoing and continuous, as Defendants
8 engaged and continue to engage in conduct which violates Health and Safety Code
9 Section 25249.6, including the manufacture, distribution, promotion, and sale of Beef
10 Spices, so that a separate and distinct violation of Proposition 65 occurred each and
11 every time a person was exposed to Arsenic by Beef Spices as mentioned herein.
- 12 63. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
13 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
14 violations alleged herein will continue to occur into the future.
- 15 64. Based on the allegations herein, Defendants are liable for civil penalties of up to
16 \$2,500.00 per day per individual exposure to Arsenic from Beef Spices, pursuant to
17 Health and Safety Code Section 25249.7(b).
- 18 65. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
19 filing this Complaint.

20
21 **FOURTH CAUSE OF ACTION**

22 **(By CONSUMER ADVOCACY GROUP, INC. and against TRONG and DOES**
23 **31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
24 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

25 **Spices**

- 26 66. Plaintiff repeats and incorporates by reference paragraphs 1 through 65 of this complaint
27 as though fully set forth herein.
- 28 67. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Curry Powder ("Curry Powder III"), defined as: (i)

1 “CA RI NI AN DO;” “KIM TU THAP;” “MADRAS CURRY POWDER;” “NET WT.
2 (16oz) 453 GRAMS”; “X0024MZ6WZ”; “UPC 0 3960 00154 8”; and (ii) “CA RI NI
3 AN DO;” “KIM TU THAP;” “MADRAS CURRY POWDER;” “NET WT. (4oz) 114
4 GRAMS”; “CSG-20” “UPC 0 3960 00152 5”;

5 a. Cause of Action Four is limited to the UPC Numbers 039606001548 and
6 039606001524 of Curry Powder III.

7 68. Curry Powder III contains Lead.

8 69. Defendants knew or should have known that Lead has been identified by the State of
9 California as a chemical known to cause cancer and reproductive toxicity and therefore
10 was subject to Proposition 65 warning requirements. Defendants were also informed of
11 the presence of Lead in Curry Powder III within Plaintiff's notice of alleged violations
12 further discussed above at Paragraph 24d.

13 70. Plaintiff's allegations regarding Curry Powder III concerns “[c]onsumer products
14 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,
15 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
16 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
17 25602(b). Curry Powder III is a consumer product, and, as mentioned herein, exposures
18 to Lead took place as a result of such normal and foreseeable consumption and use.

19 71. Plaintiff is informed, believes, and thereon alleges that between July 7, 2017 and the
20 present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of Curry Powder III, which Defendants manufactured, distributed,
22 or sold as mentioned above, to Lead, without first providing any type of clear and
23 reasonable warning of such to the exposed persons before the time of exposure.
24 Defendants have distributed and sold Curry Powder III in California. Defendants know
25 and intend that California consumers will use and consume Curry Powder III, thereby
26 exposing them to Lead. Defendants thereby violated Proposition 65.

- 1 72. The principal routes of exposure are through dermal contact, ingestion and inhalation.
2 Persons sustain exposures by eating, mixing, or handling Curry Powder III without
3 wearing gloves or any other personal protective equipment, or by touching bare skin or
4 mucous membranes with gloves after handling Curry Powder III, as well as through
5 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
6 particulate matter emanating from Curry Powder III during use, as well as through
7 environmental mediums that carry the Lead once contained within the Curry Powder III.
- 8 73. Further, Plaintiff is informed, believes, and thereon alleges that TRONG knowingly
9 introduced Lead into the Curry Powder III; knowingly caused Lead to be created in the
10 Curry Powder III; covered, obscured, or altered a warning; received notice and warning
11 materials for the exposure from its upstream entities; and/or have actual knowledge of
12 the potential exposure to Lead from Curry Powder III requiring the warning
- 13 74. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
14 Proposition 65 as to Curry Powder III have been ongoing and continuous, as Defendants
15 engaged and continue to engage in conduct which violates Health and Safety Code
16 Section 25249.6, including the manufacture, distribution, promotion, and sale of Curry
17 Powder III, so that a separate and distinct violation of Proposition 65 occurred each and
18 every time a person was exposed to Lead by Curry Powder III as mentioned herein.
- 19 75. 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 76. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to Lead from Curry Powder III, pursuant to
24 Health and Safety Code Section 25249.7(b).
- 25 77. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
26 filing this Complaint.

1 **FIFTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against TRONG and DOES**
3 **41-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Spices**

6 78. Plaintiff repeats and incorporates by reference paragraphs 1 through 77 of this complaint
7 as though fully set forth herein.

8 79. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Paprika Powder (“Paprika Powder”), defined as:
10 “Kim Tu Thap”; “Pyramide”; “OT Mau”; “Paprika Powder”; “Trong Food
11 International”; “Trong Food International”; “Net Wt. 2 oz”; “UPC 0 39606 001258”
12 “Product of USA”.

13 a. Cause of Action Five is limited to the UPC Number 039606001258 of Paprika
14 Powder.

15 80. Paprika Powder contains Lead, Cadmium, and Arsenic.

16 81. Defendants knew or should have known that Lead, Cadmium, and Arsenic have been
17 identified by the State of California as a chemical known to cause cancer and
18 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
19 Defendants were also informed of the presence of Lead, Cadmium, and Arsenic in
20 Paprika Powder within Plaintiff’s notice of alleged violations further discussed above at
21 Paragraphs 24e and 24f.

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

1 83. Plaintiff is informed, believes, and thereon alleges that between July 28, 2017 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Paprika Powder, which Defendants manufactured, distributed, or
4 sold as mentioned above, to Lead, Cadmium, and Arsenic without first providing any
5 type of clear and reasonable warning of such to the exposed persons before the time of
6 exposure. Defendants have distributed and sold Paprika Powder in California.

7 Defendants know and intend that California consumers will use and consume Paprika
8 Powder, thereby exposing them to Lead, Cadmium, and Arsenic. Defendants thereby
9 violated Proposition 65.

10 84. The principal routes of exposure are through dermal contact, ingestion and inhalation.
11 Persons sustain exposures by eating, mixing, or handling Paprika Powder without
12 wearing gloves or any other personal protective equipment, or by touching bare skin or
13 mucous membranes with gloves after handling Paprika Powder, as well as through direct
14 and indirect hand to mouth contact, hand to mucous membrane, or breathing in
15 particulate matter emanating from Paprika Powder during use, as well as through
16 environmental mediums that carry the Lead, Cadmium, and Arsenic once contained
17 within the Paprika Powder.

18 85. Further, Plaintiff is informed, believes, and thereon alleges that TRONG knowingly
19 introduced Lead into the Paprika Powder; knowingly caused Lead, Cadmium, and
20 Arsenic to be created in the Paprika Powder; covered, obscured, or altered a warning;
21 received notice and warning materials for the exposure from its upstream entities; and/or
22 have actual knowledge of the potential exposure to Lead, Cadmium, and Arsenic from
23 Paprika Powder requiring the warning

24 86. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Paprika Powder have been ongoing and continuous, as Defendants
26 engaged and continue to engage in conduct which violates Health and Safety Code
27 Section 25249.6, including the manufacture, distribution, promotion, and sale of Paprika
28

1 Powder, so that a separate and distinct violation of Proposition 65 occurred each and
2 every time a person was exposed to Lead, Cadmium, and Arsenic by Paprika Powder as
3 mentioned herein.

4 87. 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 88. 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, Cadmium, and Arsenic from Paprika
9 Powder, pursuant to Health and Safety Code Section 25249.7(b).

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

12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

19
20
21 Dated: December 31, 2020

YEROUSHALMI & YEROUSHALMI*

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