

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elaine Lu

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

**21STCV01324**

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

Plaintiff,

v.

AMAZON.COM, LLC, a Delaware Limited  
Liability Company;  
AMAZON.COM SERVICES, INC., a  
Delaware Corporation;  
RHEE BROS., INC., a Maryland Corporation  
KOREAN FARM, INC., a California  
Corporation  
and DOES 1-10,

Defendants.

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one of action against  
defendants AMAZON.COM, LLC, AMAZON.COM SERVICES, INC., RHEE BROS., INC.,  
KOREAN FARM, INC., and DOES 1-10 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 AMAZON.COM, LLC (“AMAZON LLC”) is a Delaware Limited Liability Company doing business in the State of California at all relevant times herein.
3. Defendant AMAZON.COM SERVICES, INC (“AMAZON INC.”) is a Delaware Corporation doing business in the State of California at all relevant times herein.
4. Defendant RHEE BROS., INC. (“RHEE”) is a Maryland Corporation doing business in the State of California at all relevant times herein.
5. Defendant KOREAN FARM, INC. (“KOREAN FARM”) is a California Corporation doing business in the State of California at all relevant times herein.
6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
7. At all times mentioned herein, the term “Defendants” includes AMAZON LLC, AMAZON INC., RHEE, KOREAN FARM, and DOES 1-10.
8. 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.
9. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the

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

- 7 10. 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 11. 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 12. 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  
22 manufacture, distribution, promotion, marketing, or sale of their products within  
23 California to render the exercise of jurisdiction by the California courts permissible  
24 under traditional notions of fair play and substantial justice.
- 25 13. 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  
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1 because Defendants conducted, and continue to conduct, business in the County of Los  
2 Angeles with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

- 4 14. In 1986, California voters approved an initiative to address growing concerns about  
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
10 from contamination, to allow consumers to make informed choices about the products  
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
12 fit.
- 13 15. Proposition 65 requires the Governor of California to publish a list of chemicals known  
14 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
15 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
16 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
17 other controls that apply to Proposition 65-listed chemicals.
- 18 16. All businesses with ten (10) or more employees that operate or sell products in California  
19 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
20 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
21 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
22 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
23 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 24 17. Proposition 65 provides that any person “violating or threatening to violate” the statute  
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
26 25249.7. “Threaten to violate” means “to create a condition in which there is a  
27 substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).

Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

18. Plaintiff identified certain practices of manufacturers and distributors of Rice of exposing, knowingly and intentionally, persons in California to Lead and Lead Compounds (“Lead”) of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.
19. On October 1, 1992 the Governor of California added Lead to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to the State to cause cancer, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.
20. On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to the State to cause developmental and reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.

#### **SATISFACTION OF PRIOR NOTICE**

21. Plaintiff served the following notices for alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures:
- a. On or about August 25, 2020, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to AMAZON LLC, AMAZON INC., RHEE, KOREAN FARM and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at

1 least 750,000 people in whose jurisdictions the violations allegedly occurred,  
2 concerning the Wild Rice.

3 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
4 products involved, the likelihood that such products would cause users to suffer  
5 significant exposures to Lead, and the corporate structure of each of the Defendants.

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

15 24. Plaintiff's notice of alleged violations also included a Certificate 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 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
19 gave notice of the alleged violations to AMAZON LLC, AMAZON INC., RHEE,  
20 KOREAN FARM and the public prosecutors referenced in Paragraph 21.

21 26. 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.

24 **FIRST CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against AMAZON LLC,**  
26 **AMAZON INC., RHEE, KOREAN FARM and DOES 1-10 for Violations of**  
27 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
**(*Health & Safety Code*, §§ 25249.5, et seq.))**

**Rice**

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

28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Wild Rice (“Rice”), including but not limited to: “Han Kuk Mi <sup>TM</sup>”; “Wild Sweet Rice”; “Net Wt. 2 lb (907g)”; “X001OQA42T”; “Han Kuk Mi Wild Sweet Rice, 2 Pound”; “ASIN B00DYEAR2K”; “Product of Thailand

29. Rice contains Lead.

30. Defendants knew or should have known that Lead has been identified by the State of California as a chemical known to cause cancer, and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of Lead in Rice within Plaintiff’s notice of alleged violations further discussed above at Paragraph 21a.

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

32. Plaintiff is informed, believes, and thereon alleges that between August 25, 2017 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Rice, which Defendants manufactured, distributed, or sold as mentioned above, to Lead, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Rice in California. Defendants know and intend that California consumers will use and consume Rice, thereby exposing them to Lead. Further, Plaintiff is

1 informed, believes, and thereon alleges that Defendants are selling Rice under a brand or  
2 trademark that is owned or licensed by the Defendants or an entity affiliated thereto;  
3 have knowingly introduced Lead into Rice or knowingly caused Lead to be created in  
4 Rice; have covered, obscured or altered a warning label that has been affixed to Rice by  
5 the manufacturer, producer, packager, importer, supplier or distributor of Rice; have  
6 received a notice and warning materials for exposure from Rice without conspicuously  
7 posting or displaying the warning materials; and/or have actual knowledge of potential  
8 exposure to Lead from Rice. Defendants thereby violated Proposition 65.

9 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.

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

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

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

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

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

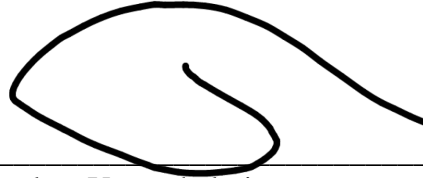
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2 **PRAYER FOR RELIEF**

3 Plaintiff demands against each of the Defendants as follows:

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

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10 Dated: January 12, 2021

YEROUSHALMI & YEROUSHALMI\*

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14 Reuben Yeroushalmi  
15 Attorneys for Plaintiff,  
16 CONSUMER ADVOCACY GROUP, INC.  
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