

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroshalmi.com

3 **YERUSHALMI & YERUSHALMI\***

9100 Wilshire Boulevard, Suite 240W

3 Beverly Hills, California 90212

4 Telephone: (310) 623-1926

4 Facsimile: (310) 623-1930

5 Attorneys for Plaintiff,

6 CONSUMER ADVOCACY GROUP, INC.

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

8 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

13 v.

14 VITACOST.COM, INC., a Florida  
15 Corporation;  
16 BADIA SPICES, INC., a Florida  
17 Corporation;  
18 AMAZON.COM, INC., a Delaware  
19 Corporation  
and DOES 1-20,

19 Defendants.

CASE NO. **21STCV08004**

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 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
23 against defendants VITACOST.COM, INC.; BADIA SPICES, INC.; AMAZON.COM, INC;  
24 and DOES 1-20 as follows:  
25

**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 VITACOST.COM, INC. (“VITACOST”) is a Florida Corporation doing business in the State of California at all relevant times herein.
3. Defendant BADIA SPICES, INC. (“BADIA”) is a Florida Corporation doing business in the State of California at all relevant times herein.
4. Defendant AMAZON.COM, INC. (“AMAZON”) is a Delaware 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 1-20, 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.
6. At all times mentioned herein, the term “Defendants” includes VITACOST, BADIA, AMAZON, and DOES 1-20.
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 1-20, 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

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

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

### 9 **JURISDICTION**

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

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

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

### 27 **BACKGROUND AND PRELIMINARY FACTS**

- 1 13. In 1986, California voters approved an initiative to address growing concerns about  
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
7 from contamination, to allow consumers to make informed choices about the products  
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
9 fit.
- 10 14. Proposition 65 requires the Governor of California to publish a list of chemicals known  
11 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
12 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
13 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
14 other controls that apply to Proposition 65-listed chemicals.
- 15 15. All businesses with ten (10) or more employees that operate or sell products in California  
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
17 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
18 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
19 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
20 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 21 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
23 25249.7. "Threaten to violate" means "to create a condition in which there is a  
24 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
25 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
26 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
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- 1 17. Plaintiff identified certain practices of manufacturers and distributors of exposing,  
2 knowingly and intentionally, persons in California to Lead and Lead Compounds,  
3 Cadmium and Cadmium Compounds, Inorganic Arsenic Compounds, and/or Inorganic  
4 Arsenic Oxides without first providing clear and reasonable warnings of such to the  
5 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
6 engaged in such practice.
- 7 18. On October 1, 1992 the Governor of California added Lead and Lead Compounds  
8 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.  
9 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,  
10 twenty (20) months after addition of Lead to the list of chemicals known to the State to  
11 cause cancer, Lead became fully subject to Proposition 65 warning requirements and  
12 discharge prohibitions.
- 13 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
14 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*  
15 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and  
16 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
17 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to  
18 the State to cause developmental and reproductive toxicity, Lead became fully subject to  
19 Proposition 65 warning requirements and discharge prohibitions.
- 20 20. On February 27, 1987 the Governor of California added Inorganic Arsenic Compounds  
21 to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §  
22 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty  
23 (20) months after addition of Inorganic Arsenic Compounds to the list of chemicals  
24 known to the State to cause cancer, Inorganic Arsenic Compounds became fully subject  
25 to Proposition 65 warning requirements and discharge prohibitions.
- 26 21. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list  
27 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,  
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1 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,  
2 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty  
3 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to  
4 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject  
5 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic  
6 Compounds and Inorganic Arsenic Oxides is hereinafter referred to as “Arsenic”.

7 **SATISFACTION OF PRIOR NOTICE**

8 22. Plaintiff served the following notices for alleged violations of Health and Safety Code  
9 Section 25249.6, concerning consumer products exposures:

- 10 a. On or about November 5, 2020, Plaintiff gave notice of alleged violations of  
11 Health and Safety Code Section 25249.6, concerning consumer products  
12 exposures subject to a private action to VITACOST, BADIA, and to the  
13 California Attorney General, County District Attorneys, and City Attorneys for  
14 each city containing a population of at least 750,000 people in whose  
15 jurisdictions the violations allegedly occurred, concerning Ground Ginger.
- 16 b. On or about November 13, 2020, Plaintiff gave notice of alleged violations of  
17 Health and Safety Code Section 25249.6, concerning consumer products  
18 exposures subject to a private action to AMAZON, BADIA, and to the  
19 California Attorney General, County District Attorneys, and City Attorneys for  
20 each city containing a population of at least 750,000 people in whose  
21 jurisdictions the violations allegedly occurred, concerning Shrimp Powder.

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

26 24. Plaintiff’s notices of alleged violation included Certificates of Merit executed by the  
27 attorney for the noticing party, CAG. The Certificates 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 and Arsenic, the subject Proposition 65-listed chemicals of this action. Based on that  
4 information, the attorney for Plaintiff who executed the Certificates of Merit believed  
5 there was a reasonable and meritorious case for this private action. The attorney for  
6 Plaintiff attached to the Certificates of Merit served on the Attorney General the  
7 confidential factual information sufficient to establish the basis of the Certificates of  
8 Merit.

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

12 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
13 gave notice of the alleged violations to VITACOST, BADIA, AMAZON, and the public  
14 prosecutors referenced in Paragraph 22.

15 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
16 any applicable district attorney or city attorney has commenced and is diligently  
17 prosecuting an action against the Defendants.

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**FIRST CAUSE OF ACTION**

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

23 **Ground Ginger**

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

26 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
27 distributor, promoter, or retailer of Ground Ginger ("Ginger"), identified as: "BADIA  
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1 Ground Ginger”; “Net Wt. 1.5 oz (42.5g)”; “Badia Spices Inc. “Packed in U.S.A.”;  
2 “UPC 0 33844 00223 7”.

3 a. The scope of this cause of action is limited to the Lot Number 199890 of Ginger.

4 30. Ginger contains Lead.

5 31. Defendants knew or should have known that Lead has been identified by the State of  
6 California as a chemical known to cause cancer and reproductive toxicity and therefore  
7 was subject to Proposition 65 warning requirements. Defendants were also informed of  
8 the presence of Lead in Ginger within Plaintiff’s notice of alleged violations further  
9 discussed above at Paragraph 22a.

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

16 33. Plaintiff is informed, believes, and thereon alleges that between November 5, 2017 and  
17 the present, each of the Defendants knowingly and intentionally exposed California  
18 consumers and users of Ginger, which Defendants manufactured, distributed, or sold as  
19 mentioned above, to Lead, without first providing any type of clear and reasonable  
20 warning of such to the exposed persons before the time of exposure. Defendants have  
21 distributed and sold Ginger in California. Defendants know and intend that California  
22 consumers will use and consume Ginger, thereby exposing them to Lead. Defendants  
23 thereby violated Proposition 65.

24 34. Plaintiff is informed, believes, and thereon alleges that VITACOST is selling Ginger  
25 under a brand or trademark that is owned or licensed by VITACOST or an entity  
26 affiliated thereto; has knowingly introduced Lead into Ginger or knowingly caused Lead  
27 to be created in Ginger; have covered, obscured or altered a warning label that has been  
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1 affixed to Ginger by the manufacturer, producer, packager, importer, supplier or  
2 distributor of Ginger; have received a notice and warning materials for exposure from  
3 Lead without conspicuously posting or displaying the warning materials; and/or have  
4 actual knowledge of potential exposure to Lead from Ginger.

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

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

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

5 **Spices**

6 40. Plaintiff repeats and incorporates by reference paragraphs 1 through 39 of this complaint  
7 as though fully set forth herein.

8 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of Shrimp Powder (“Shrimp”), identified as: “BADIA  
10 Shrimp Powder”; “Net Wt. 1 oz (28.4 g)”; “Badia Spices Inc. “Packed in U.S.A.”; “UPC  
11 0 33844 00286 2”.

12 a. The scope of this cause of action is limited to the specific UPC number  
13 033844002862 and Lot Number of Shrimp.

14 42. Shrimp contains Arsenic.

15 43. Defendants knew or should have known that Arsenic has been identified by the State of  
16 California as a chemical known to cause cancer and reproductive toxicity and therefore  
17 was subject to Proposition 65 warning requirements. Defendants were also informed of  
18 the presence of Arsenic in Shrimp within Plaintiff’s notice of alleged violations further  
19 discussed above at Paragraph 22b.

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

26 45. Plaintiff is informed, believes, and thereon alleges that between November 13, 2017 and  
27 the present, each of the Defendants knowingly and intentionally exposed California  
28 consumers and users of Shrimp, which Defendants manufactured, distributed, or sold as

1 mentioned above, to Arsenic, without first providing any type of clear and reasonable  
2 warning of such to the exposed persons before the time of exposure. Defendants have  
3 distributed and sold Shrimp in California. Defendants know and intend that California  
4 consumers will use and consume Shrimp, thereby exposing them to Arsenic. Defendants  
5 thereby violated Proposition 65.

6 46. Plaintiff is informed, believes, and thereon alleges that AMAZON is selling Shrimp  
7 under a brand or trademark that is owned or licensed by AMAZON or an entity affiliated  
8 thereto; has knowingly introduced Arsenic into Shrimp or knowingly caused Arsenic to  
9 be created in Shrimp; have covered, obscured or altered a warning label that has been  
10 affixed to Shrimp by the manufacturer, producer, packager, importer, supplier or  
11 distributor of Shrimp; have received a notice and warning materials for exposure from  
12 Lead without conspicuously posting or displaying the warning materials; and/or have  
13 actual knowledge of potential exposure to Arsenic from Shrimp.

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

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

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1 49. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur into the future.

4 50. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to Arsenic from Shrimp, pursuant to Health  
6 and Safety Code Section 25249.7(b).

7 51. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

9 PRAYER FOR RELIEF

10 Plaintiff demands against each of the Defendants as follows:

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

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17 Dated: March 1, 2021

YEROUSHALMI & YEROUSHALMI\*

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21 \_\_\_\_\_  
22 Reuben Yeroushalmi  
23 Attorneys for Plaintiff,  
24 CONSUMER ADVOCACY GROUP, INC.  
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