

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Terry Green

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9 CONSUMER ADVOCACY GROUP, INC.

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 POSHARPSTORE.COM, INC., a
19 Massachusetts Corporation;
20 HOCEAN, INC. DBA ASIAN FINE
21 FOODS, a California Corporation;
22 and DOES 1-20,

23 Defendants.

CASE NO. 22STCV03471

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)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
25 against defendants POSHARPSTORE.COM, INC., HOCEAN, INC. DBA ASIAN FINE
26 FOODS, and DOES 1-20 as follows:

27 **THE PARTIES**

28 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

1 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
2 as a private attorney general, brings this action in the public interest as defined under
3 Health and Safety Code Section 25249.7, subdivision (d).

- 4 2. Defendant POSHARPSTORE.COM, INC., (“POSHARP”) is a Massachusetts
5 Corporation doing business in the State of California at all relevant times herein.
- 6 3. Defendant HOCEAN, INC. DBA ASIAN FINE FOODS, (“HOCEAN”) is a California
7 Corporation, qualified to do business and doing business in the State of California at all
8 relevant times herein.
- 9 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
11 Complaint to allege their true names and capacities when ascertained. Plaintiff is
12 informed, believes, and thereon alleges that each fictitiously named defendant is
13 responsible in some manner for the occurrences herein alleged and the damages caused
14 thereby.
- 15 5. At all times mentioned herein, the term “Defendants” includes POSHARP, HOCEAN,
16 and DOES 1-20.
- 17 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
18 times mentioned herein have conducted business within the State of California.
- 19 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
20 including DOES 1-20, was an agent, servant, or employee of each of the other
21 Defendants. In conducting the activities alleged in this Complaint, each of the
22 Defendants was acting within the course and scope of this agency, service, or
23 employment, and was acting with the consent, permission, and authorization of each of
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint
25 were ratified and approved by every other Defendant or their officers or managing
26 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
27 alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

19 11. Venue is proper in the County of Los Angeles because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
21 because Defendants conducted, and continue to conduct, business in the County of Los
22 Angeles with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

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

6 13. Proposition 65 requires the Governor of California to publish a list of chemicals known
7 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
8 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
9 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
10 other controls that apply to Proposition 65-listed chemicals.

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

17 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
19 25249.7. "Threaten to violate" means "to create a condition in which there is a
20 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 16. Plaintiff identified certain practices of manufacturers and distributors of products-tier
24 two of exposing, knowingly and intentionally, persons in California to Lead and Lead
25 Compounds, Cadmium and Inorganic Arsenic Oxides of such products without first
26 providing clear and reasonable warnings of such to the exposed persons prior to the time
27 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

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1 17. On October 1, 1992 the Governor of California added Lead and Lead Compounds
2 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
3 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
4 twenty (20) months after addition of Lead to the list of chemicals known to the State to
5 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
6 discharge prohibitions.

7 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals
8 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
9 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
10 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
11 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
12 the State to cause developmental and reproductive toxicity, Lead became fully subject to
13 Proposition 65 warning requirements and discharge prohibitions.

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

23 SATISFACTION OF PRIOR NOTICE

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

- 26 a. On or about May 28, 2021 Plaintiff gave notice of alleged violations of Health
27 and Safety Code Section 25249.6, concerning consumer products exposures

1 subject to a private action to POSHARP, HOCEAN and to the California
2 Attorney General, County District Attorneys, and City Attorneys for each city
3 containing a population of at least 750,000 people in whose jurisdictions the
4 violations allegedly occurred, concerning the Spices

5 b. On or about June 16, 2021 Plaintiff gave notice of alleged violations of Health
6 and Safety Code Section 25249.6, concerning consumer products exposures
7 subject to a private action to POSHARP , and to the California Attorney
8 General, County District Attorneys, and City Attorneys for each city containing
9 a population of at least 750,000 people in whose jurisdictions the violations
10 allegedly occurred, concerning the Spices

11 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
12 products involved, the likelihood that such products would cause users to suffer
13 significant exposures to relevant chemicals, and the corporate structure of each of the
14 Defendants.

15 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
16 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
17 Plaintiff who executed the certificate had consulted with at least one person with relevant
18 and appropriate expertise who reviewed data regarding the exposures to relevant
19 chemicals, the subject Proposition 65-listed chemical of this action. Based on that
20 information, the attorney for Plaintiff who executed the Certificate of Merit believed
21 there was a reasonable and meritorious case for this private action. The attorney for
22 Plaintiff attached to the Certificate of Merit served on the Attorney General the
23 confidential factual information sufficient to establish the basis of the Certificate of
24 Merit.

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

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1 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notice of the alleged violations to POSHARP, HOCEAN, and the public
3 prosecutors referenced in Paragraph 21.

4 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
5 any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

7
8 **FIRST CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against POSHARP,**
10 **HOCEAN, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking**
11 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
12 ***seq.*))**

13 **Spices 1**

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

16 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
17 distributor, promoter, or retailer of Turmeric Powder identified as "Turmeric Powder";
18 "Net wt 2.8 oz (80g); "Bot Nghe"; "Willis Eagle TM"; "UPC 0 45027 111889"; "Product
19 of Vietnam"

20 a. The scope of this cause of action is limited to the specific lot number and/or
21 batch number of Turmeric Powder named above.

22 28. Turmeric Powder contains Lead and Inorganic Arsenic.

23 29. Defendants knew or should have known that Lead and Inorganic Arsenic has been
24 identified by the State of California as a chemical known to cause cancer, and
25 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
26 Defendants were also informed of the presence of Lead and Inorganic Arsenic in
27 Turmeric Powder within Plaintiff's notice of alleged violations further discussed above at
28 Paragraph 21a.

1 30. Plaintiff’s allegations regarding Turmeric Powder concerns “[c]onsumer products
2 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
5 *25602(b)*. Turmeric Powder is a consumer products, and, as mentioned herein,
6 exposures to Lead and Inorganic Arsenic took place as a result of such normal and
7 foreseeable consumption and use.

8 31. Plaintiff is informed, believes, and thereon alleges that between May 28, 2018 and the
9 present, each of the Defendants knowingly and intentionally exposed California
10 consumers and users of Turmeric Powder, which Defendants manufactured, distributed,
11 or sold as mentioned above, to Lead and Inorganic Arsenic, without first providing any
12 type of clear and reasonable warning of such to the exposed persons before the time of
13 exposure. Defendants have distributed and sold Turmeric Powder in California.
14 Defendants know and intend that California consumers will use and consume Turmeric
15 Powder, thereby exposing them to Lead and Inorganic Arsenic. Further, Plaintiff is
16 informed, believes, and thereon alleges that Defendants are selling Turmeric Powder
17 under a brand or trademark that is owned or licensed by the Defendants or an entity
18 affiliated thereto; have knowingly introduced Lead and Inorganic Arsenic into Turmeric
19 Powder or knowingly caused Lead and Inorganic Arsenic to be created in Turmeric
20 Powder; have covered, obscured or altered a warning label that has been affixed to
21 Turmeric Powder by the manufacturer, producer, packager, importer, supplier or
22 distributor of Turmeric Powder; have received a notice and warning materials for
23 exposure from Turmeric Powder without conspicuously posting or displaying the
24 warning materials; and/or have actual knowledge of potential exposure to Lead and
25 Inorganic Arsenic from Turmeric Powder. Defendants thereby violated Proposition 65.

26 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
27 Persons sustain exposures by eating and consuming Turmeric Powder and by handling
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1 Turmeric Powder without wearing gloves or any other personal protective equipment, or
2 by touching bare skin or mucous membranes with gloves after handling Turmeric
3 Powder, as well as through direct and indirect hand to mouth contact, hand to mucous
4 membrane, or breathing in particulate matter dispersed from Turmeric Powder.

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

12 34. 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 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
16 \$2,500.00 per day per individual exposure to Lead and Inorganic Arsenic from Turmeric
17 Powder, pursuant to Health and Safety Code Section 25249.7(b).

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

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21 **SECOND CAUSE OF ACTION**

22 **(By CONSUMER ADVOCACY GROUP, INC. and against POSHARP, and DOES**
23 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
24 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

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26 **Spices 2**

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

1 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Five Spice Powder identified as • “Goldensmell”;
3 “Five Spice Powder”; “UPC 4 710868 300063”; “Made in Taiwan”

4 a. The scope of this cause of action is limited to the specific lot number and/or
5 batch number of Five Spice Powder named above.

6 39. Five Spice Powder contains Lead and Inorganic Arsenic.

7 40. Defendants knew or should have known that Lead and Inorganic Arsenic has been
8 identified by the State of California as a chemical known to cause cancer, and
9 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
10 Defendants were also informed of the presence of Lead and Inorganic Arsenic in Five
11 Spice Powder within Plaintiff’s notice of alleged violations further discussed above at
12 Paragraph 21b.

13 41. Plaintiff’s allegations regarding Five Spice Powder 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)*. Five Spice Powder is a consumer products, and, as mentioned herein,
18 exposures to Lead and Inorganic Arsenic took place as a result of such normal and
19 foreseeable consumption and use.

20 42. Plaintiff is informed, believes, and thereon alleges that between June 16, 2018 and the
21 present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Five Spice Powder, which Defendants manufactured, distributed,
23 or sold as mentioned above, to Lead and Inorganic Arsenic, without first providing any
24 type of clear and reasonable warning of such to the exposed persons before the time of
25 exposure. Defendants have distributed and sold Five Spice Powder in California.
26 Defendants know and intend that California consumers will use and consume Five Spice
27 Powder, thereby exposing them to Lead and Inorganic Arsenic. Further, Plaintiff is
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1 informed, believes, and thereon alleges that Defendants are selling Five Spice Powder
2 under a brand or trademark that is owned or licensed by the Defendants or an entity
3 affiliated thereto; have knowingly introduced Lead and Inorganic Arsenic into Five
4 Spice Powder or knowingly caused Lead and Inorganic Arsenic to be created in Five
5 Spice Powder; have covered, obscured or altered a warning label that has been affixed to
6 Five Spice Powder by the manufacturer, producer, packager, importer, supplier or
7 distributor of Five Spice Powder; have received a notice and warning materials for
8 exposure from Five Spice Powder without conspicuously posting or displaying the
9 warning materials; and/or have actual knowledge of potential exposure to Lead and
10 Inorganic Arsenic from Five Spice Powder. Defendants thereby violated Proposition 65.

11 43. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by eating and consuming Five Spice Powder and by handling
13 Five Spice Powder without wearing gloves or any other personal protective equipment,
14 or by touching bare skin or mucous membranes with gloves after handling Five Spice
15 Powder, as well as through direct and indirect hand to mouth contact, hand to mucous
16 membrane, or breathing in particulate matter dispersed from Five Spice Powder.

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

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

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1 46. 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 and Inorganic Arsenic from Five
3 Spice Powder, pursuant to Health and Safety Code Section 25249.7(b).

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

6
7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

9 48. A permanent injunction mandating Proposition 65-compliant warnings;

10 49. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);

11 50. Costs of suit;

12 51. Reasonable attorney fees and costs; and

13 52. Any further relief that the court may deem just and equitable.

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15 Dated: January 27, 2022

YEROUSHALMI & YEROUSHALMI*

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18 _____
19 Reuben Yeroushalmi
20 Attorneys for Plaintiff,
21 CONSUMER ADVOCACY GROUP, INC.
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