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8 CONSUMER ADVOCACY GROUP, INC.

FILED
Superior Court of California
County of Los Angeles
06/29/2023

David W. Slayton, Executive Officer / Clerk of Court
By: N. Osollo Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 POSHARPSTORE.COM, INC., a
16 Massachusetts Corporation;
17 HOCEAN, INC. DBA ASIAN FINE
18 FOODS, a California Corporation;
19 WILLIS OCEAN, INC., a New York
20 Corporation;
21 and DOES 1-20,

22 Defendants.

CASE NO. 22STCV03471

FIRST AMENDED 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)

23
24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
25 against defendants POSHARPSTORE.COM, INC.,HOCEAN, INC. DBA ASIAN FINE
26 FOODS, WILLIS OCEAN, INC., and DOES 1-20 as follows:

27 **THE PARTIES**

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

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

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1 **SATISFACTION OF PRIOR NOTICE**

2 21. Plaintiff served the following notices for alleged violations of Health and Safety Code
3 Section 25249.6, concerning consumer products exposures:

4 a. On or about May 28, 2021, 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 POSHARP, HOCEAN, WILLIS, and to the
7 California Attorney General, County District Attorneys, and City Attorneys for
8 each city containing a population of at least 750,000 people in whose
9 jurisdictions the violations allegedly occurred, concerning the Spices.

10 b. On or about June 16, 2021, 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 POSHARP, 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 the Spices.

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

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

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

6 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notice of the alleged violations to POSHARP , HOCEAN, WILLIS, and the public
8 prosecutors referenced in Paragraph 21.

9 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
10 any applicable district attorney or city attorney has commenced and is diligently
11 prosecuting an action against the Defendants.

12 **FIRST CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against POSHARP,**
14 **HOCEAN, WILLIS, and DOES 1-10 for Violations of Proposition 65, The Safe**
15 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
16 **25249.5, *et seq.*))**

17 **Spices I**

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

20 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of Turmeric Powder identified as ("Turmeric Powder");
22 "Net wt 2.8 oz (80g); "Bit Nghe"; "Willis Eagle TM "; "UPC 0 45027 111889"; "Product
23 of Vietnam"

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

26 29. Turmeric Powder contains Lead and Inorganic Arsenic.

27 30. Defendants knew or should have known that Lead and Inorganic Arsenic has been
28 identified by the State of California as a chemical known to cause cancer, and

1 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.
2 Defendants were also informed of the presence of Lead and Inorganic Arsenic in
3 Turmeric Powder within Plaintiff's notice of alleged violations further discussed above at
4 Paragraph 21a.

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

12 32. Plaintiff is informed, believes, and thereon alleges that between May 28, 2018 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Turmeric Powder, which Defendants manufactured, distributed,
15 or sold as mentioned above, to Lead and Inorganic Arsenic, without first providing any
16 type of clear and reasonable warning of such to the exposed persons before the time of
17 exposure. Defendants have distributed and sold Turmeric Powder in California.
18 Defendants know and intend that California consumers will use and consume Turmeric
19 Powder, thereby exposing them to Lead and Inorganic Arsenic. Further, Plaintiff is
20 informed, believes, and thereon alleges that Defendants are selling Turmeric Powder
21 under a brand or trademark that is owned or licensed by the Defendants or an entity
22 affiliated thereto; have knowingly introduced Lead and Inorganic Arsenic into Turmeric
23 Powder or knowingly caused Lead and Inorganic Arsenic to be created in Turmeric
24 Powder; have covered, obscured or altered a warning label that has been affixed to
25 Turmeric Powder by the manufacturer, producer, packager, importer, supplier or
26 distributor of Turmeric Powder; have received a notice and warning materials for
27 exposure from Turmeric Powder without conspicuously posting or displaying the
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- 1 warning materials; and/or have actual knowledge of potential exposure to Lead and
2 Inorganic Arsenic from Turmeric Powder . Defendants thereby violated Proposition 65.
- 3 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.
4 Persons sustain exposures by handling Turmeric Powder without wearing gloves or any
5 other personal protective equipment, or by touching bare skin or mucous membranes
6 with gloves after handling Turmeric Powder , as well as through direct and indirect hand
7 to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
8 from Turmeric Powder .
- 9 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
10 Proposition 65 as to Turmeric Powder have been ongoing and continuous, as Defendants
11 engaged and continue to engage in conduct which violates Health and Safety Code
12 Section 25249.6, including the manufacture, distribution, promotion, and sale of
13 Turmeric Powder , so that a separate and distinct violation of Proposition 65 occurred
14 each and every time a person was exposed to Lead and Inorganic Arsenic by Turmeric
15 Powder as mentioned herein.
- 16 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
18 violations alleged herein will continue to occur into the future.
- 19 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to Lead and Inorganic Arsenic from Turmeric
21 Powder , pursuant to Health and Safety Code Section 25249.7(b).
- 22 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
23 filing this Complaint.

24 **SECOND CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against POSHARP, and DOES**
26 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
27 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

28 **Spices II**

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

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

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

8 40. Five Spice Powder contains Lead and Inorganic Arsenic.

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

15 42. Plaintiff’s allegations regarding Five Spice Powder concerns “[c]onsumer products
16 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
17 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
18 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
19 *25602(b)*. Five Spice Powder is a consumer product, and, as mentioned herein,
20 exposures to Lead and Inorganic Arsenic took place as a result of such normal and
21 foreseeable consumption and use.

22 43. Plaintiff is informed, believes, and thereon alleges that between June 16, 2018 and the
23 present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Five Spice Powder, which Defendants manufactured, distributed,
25 or sold as mentioned above, to Lead and Inorganic Arsenic, without first providing any
26 type of clear and reasonable warning of such to the exposed persons before the time of
27 exposure. Defendants have distributed and sold Five Spice Powder in California.

1 Defendants know and intend that California consumers will use and consume Five Spice
2 Powder , thereby exposing them to Lead and Inorganic Arsenic. Further, Plaintiff is
3 informed, believes, and thereon alleges that Defendants are selling Five Spice Powder
4 under a brand or trademark that is owned or licensed by the Defendants or an entity
5 affiliated thereto; have knowingly introduced Lead and Inorganic Arsenic into Five
6 Spice Powder or knowingly caused Lead and Inorganic Arsenic to be created in Five
7 Spice Powder ; have covered, obscured or altered a warning label that has been affixed to
8 Five Spice Powder by the manufacturer, producer, packager, importer, supplier or
9 distributor of Five Spice Powder ; have received a notice and warning materials for
10 exposure from Five Spice Powder without conspicuously posting or displaying the
11 warning materials; and/or have actual knowledge of potential exposure to Lead and
12 Inorganic Arsenic from Five Spice Powder . Defendants thereby violated Proposition
13 65.

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

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

1 46. 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 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Lead and Inorganic Arsenic from Five
6 Spice Powder , pursuant to Health and Safety Code Section 25249.7(b).

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

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11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

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

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19 Dated: June 29, 2023

YEROUSHALMI & YEROUSHALMI*

20
21 /s/ Reuben Yeroushalmi

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