

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Yolanda Orozco

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

AA MARKET PLACE LLC, a California
Limited Liability Company;
ASIAN FINE FOODS, INC., a California
Corporation;
and DOES 1-40,

Defendants.

CASE NO. **22STCV21441**

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 four cause(s) of action
against defendants AA MARKET PLACE LLC and ASIAN FINE FOODS INC., and DOES 1-
40 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 AA MARKET PLACE LLC (“AA MARKET PLACE”) is a California Limited Liability Company, qualified to do business and doing business in the State of California at all relevant times herein.
3. Defendant ASIAN FINE FOODS INC (“ASIAN FOODS”) is a California Corporation qualified to do business and doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-40, 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.
5. At all times mentioned herein, the term “Defendants” includes AA MARKET PLACE, ASIAN FOODS and DOES 1-40.
6. 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.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-40, 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 the other Defendants. All actions of

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

5 8. 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 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI,
11 Section 10, which grants the Superior Court original jurisdiction in all causes except those
12 given by statute to other trial courts. This Court has jurisdiction over this action pursuant
13 to Health and Safety Code Section 25249.7, which allows enforcement of violations of
14 Proposition 65 in any Court of competent jurisdiction.

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

23 11. 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.

1 **BACKGROUND AND PRELIMINARY FACTS**

2 12. 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 Water
6 and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections 25249.5,
7 *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources from
8 contamination, to allow consumers to make informed choices about the products they buy,
9 and to enable persons to protect themselves from toxic chemicals as they see fit.

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

15 14. 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 15. 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* § 25249.7.
23 "Threaten to violate" means "to create a condition in which there is a substantial
24 probability that a violation will occur." *Health & Safety Code* § 25249.11(e). Defendants
25 are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a
26 civil action. *Health & Safety Code* § 25249.7(b).

1 16. Plaintiff identified certain practices of manufacturers and distributors of Food Products
2 and Spices of exposing, knowingly and intentionally, persons in California to Lead,
3 Arsenic and Cadmium, of such products without first providing clear and reasonable
4 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later
5 discerned that Defendants engaged in such practice.

6 17. 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 18. 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.* tit.
14 27, § 27001(c)). Lead is known to the State to cause developmental, female, and male
15 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
16 twenty (20) months after addition of Lead to the list of chemicals known to the State to
17 cause developmental and reproductive toxicity, Lead became fully subject to Proposition
18 65 warning requirements and discharge prohibitions.

19 19. On October 1, 1987 the Governor of California added Cadmium and Cadmium
20 Compounds (“Cadmium”) to the list of chemicals known to the State to cause cancer (*Cal.*
21 *Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and
22 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
23 to the State to cause cancer, Cadmium became fully subject to Proposition 65 warning
24 requirements and discharge prohibitions.

25 20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
26 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.* tit.
27 27, § 27001(c)). Cadmium is known to the State to cause developmental, and male
28

1 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
2 twenty (20) months after addition of Cadmium to the list of chemicals known to the State
3 to cause developmental and reproductive toxicity, Cadmium became fully subject to
4 Proposition 65 warning requirements and discharge prohibitions.

5 21. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list of
6 chemicals known to the State to cause developmental toxicity (*Cal. Code Regs. tit. 27, §*
7 *27001(c)*). Inorganic Arsenic Oxides is known to the State to cause developmental,
8 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20)
9 months after addition of Inorganic Arsenic Oxides to the list of chemicals known to the
10 State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject to
11 Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
12 Oxides is hereinafter referred to as “Arsenic”.

13 **SATISFACTION OF PRIOR NOTICE**

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

- 16 a. On or about October 29, 2021, 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 AA MARKETPLACE and ASIAN FOODS and to
19 the California Attorney General, County District Attorneys, and City Attorneys
20 for each city containing a population of at least 750,000 people in whose
21 jurisdictions the violations allegedly occurred, concerning the Fish Sauce.
- 22 b. On or about October 29, 2021 Plaintiff gave notice of alleged violations of Health
23 and Safety Code Section 25249.6, concerning consumer products exposures
24 subject to a private action to AA MARKET PLACE and to the California Attorney
25 General, County District Attorneys, and City Attorneys for each city containing a
26 population of at least 750,000 people in whose jurisdictions the violations
27 allegedly occurred, concerning the Shrimp Sauce.

1 c. On or about October 29, 2021, Plaintiff gave notice of alleged violations of Health
2 and Safety Code Section 25249.6, concerning consumer products exposures
3 subject to a private action to AA MARKET PLACE, and to the California
4 Attorney General, County District Attorneys, and City Attorneys for each city
5 containing a population of at least 750,000 people in whose jurisdictions the
6 violations allegedly occurred, concerning the Shrimp Powder .

7 d. On or about November 12, 2021, Plaintiff gave notice of alleged violations of
8 Health and Safety Code Section 25249.6, concerning consumer products
9 exposures subject to a private action to AA MARKET PLACE and to the
10 California Attorney General, County District Attorneys, and City Attorneys for
11 each city containing a population of at least 750,000 people in whose jurisdictions
12 the violations allegedly occurred, concerning the Curry Powder .

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

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

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

4 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notice of the alleged violations to AA MARKET PLACE and ASIAN FOODS and
6 the public prosecutors referenced in Paragraph 22.

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

10 **FIRST CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against AA MARKET**
12 **PLACE, ASIAN FOODS, and DOES 1-40 for Violations of Proposition 65, The**
13 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code,***
§§ 25249.5, *et seq.*))

14 **Fish Sauce**

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

17 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Fish Sauce ("Condiment I") including but not limited
19 to "Fish Sauce"; "Mam Ca Sac Con"; "Net Wt. 16 oz (454g)"; "UPC 9 45027 84841
20 2"; "Product of Vietnam"

21 30. Condiment I contain Lead.

22 31. Defendants knew or should have known that Lead has been identified by the State of
23 California as a chemical known to cause reproductive toxicity and cancer, and therefore
24 was subject to Proposition 65 warning requirements. Defendants were also informed of
25 the presence of Lead in Condiment I within Plaintiff's notice of alleged violations further
26 discussed above at Paragraph 22a.

1 32. Plaintiff's allegations regarding Condiment I 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)*. Condiment I is a consumer product, and, as mentioned herein, exposures to
6 Lead took place as a result of such normal and foreseeable consumption and use.

7 33. Plaintiff is informed, believes, and thereon alleges that between October 29, 2018 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Condiment I, which Defendants manufactured, distributed, or sold
10 as mentioned above, to Lead, without first providing any type of clear and reasonable
11 warning of such to the exposed persons before the time of exposure. Defendants have
12 distributed and sold Condiment I in California. Defendants know and intend that
13 California consumers will use and consume Condiment I, thereby exposing them to Lead.
14 Further, Plaintiff is informed, believes, and thereon alleges that Defendants are selling
15 Product under a brand or trademark that is owned or licensed by the Defendants or an
16 entity affiliated thereto; have knowingly introduced relevant chemical into product or
17 knowingly caused relevant chemical to be created in Product; have covered, obscured or
18 altered a warning label that has been affixed to Product by the manufacturer, producer,
19 packager, importer, supplier or distributor of Product; have received a notice and warning
20 materials for exposure from Product without conspicuously posting or displaying the
21 warning materials; and/or have actual knowledge of potential exposure to relevant
22 chemical from Product. Defendants thereby violated Proposition 65.

23 34. The principal routes of exposure are through dermal contact, ingestion and inhalation.
24 Persons sustain exposures by handling/consuming Condiment I without wearing gloves or
25 any other personal protective equipment, or by touching bare skin or mucous membranes
26 with gloves after handling Condiment I, as well as through direct ingestion of Condiment
27 I.

1 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Condiment I have been ongoing and continuous, as Defendants
3 engaged and continue to engage in conduct which violates Health and Safety Code Section
4 25249.6, including the manufacture, distribution, promotion, and sale of Condiment I, so
5 that a separate and distinct violation of Proposition 65 occurred each and every time a
6 person was exposed to Lead by Condiment I as mentioned herein.

7 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
8 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
9 violations alleged herein will continue to occur into the future.

10 37. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00
11 per day per individual exposure to Lead from Condiment I, pursuant to Health and Safety
12 Code Section 25249.7(b).

13 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
14 filing this Complaint.

15 **SECOND CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against AA MARKET PLACE**
17 **and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and**
18 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*)**

19 **Shrimp Sauce**

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

22 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Shrimp Sauce ("Condiment II") including but not
24 limited to "**Fine Shrimp Sauce**"; "**Net Wt 8 oz (227 g)**"; "**UPC 0 2071728008 3**";
25 "**Made in China**"

26 41. Condiment II contains Lead and Arsenic.

27 42. Defendants knew or should have known that Lead and Arsenic has been identified by the
28 State of California as chemicals known to cause reproductive toxicity and cancer, and

1 therefore was subject to Proposition 65 warning requirements. Defendants were also
2 informed of the presence of Lead and Arsenic in Condiment II within Plaintiff's notice of
3 alleged violations further discussed above at Paragraph 22b.

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

11 44. Plaintiff is informed, believes, and thereon alleges that between October 29, 2018 and the
12 present, each of the Defendants knowingly and intentionally exposed California
13 consumers and users of Condiment II, which Defendants manufactured, distributed, or
14 sold as mentioned above, to Lead and Arsenic, without first providing any type of clear
15 and reasonable warning of such to the exposed persons before the time of exposure.
16 Defendants have distributed and sold Condiment II in California. Defendants know and
17 intend that California consumers will use and consume Condiment II, thereby exposing
18 them to Lead and Arsenic. Further, Plaintiff is informed, believes, and thereon alleges that
19 Defendants are selling Product under a brand or trademark that is owned or licensed by
20 the Defendants or an entity affiliated thereto; have knowingly introduced relevant
21 chemical into product or knowingly caused relevant chemical to be created in Product;
22 have covered, obscured or altered a warning label that has been affixed to Product by the
23 manufacturer, producer, packager, importer, supplier or distributor of Product; have
24 received a notice and warning materials for exposure from Product without conspicuously
25 posting or displaying the warning materials; and/or have actual knowledge of potential
26 exposure to relevant chemical from Product. Defendants thereby violated Proposition 65.

1 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.
2 Persons sustain exposures by handling/consuming Condiment II without wearing gloves
3 or any other personal protective equipment, or by touching bare skin or mucous
4 membranes with gloves after handling Condiment II, as well as through direct ingestion
5 of Condiment II.

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

12 47. 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 48. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00
16 per day per individual exposure to Lead and Arsenic from Condiment II, pursuant to
17 Health and Safety Code Section 25249.7(b).

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

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21 **THIRD CAUSE OF ACTION**

22 **(By CONSUMER ADVOCACY GROUP, INC. and against AA MARKET PLACE**
23 **and DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and**
24 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

25 **Shrimp Powder**

26 50. Plaintiff repeats and incorporates by reference paragraphs 1 through 49 of this complaint
27 as though fully set forth herein.

28 51. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Shrimp Powder with Chili ("Spices I") identified as

1 **“Shrimp powder with Chili”; “Net Weight 3oz 85g”; “UPC 816125 000937”;**
2 **“Product of Thailand”**

3 a. The scope of this cause of action is limited to the specific lot number and/or
4 batch number of Spices I.

5 52. Spices I contain Cadmium, Lead and Arsenic.

6 53. Defendants knew or should have known that Cadmium, Lead and Arsenic has been
7 identified by the State of California as chemicals known to cause reproductive toxicity and
8 cancer, and therefore was subject to Proposition 65 warning requirements. Defendants
9 were also informed of the presence of Cadmium, Lead and Arsenic in Spices I within
10 Plaintiff's notice of alleged violations further discussed above at Paragraph 22c.

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

17 55. Plaintiff is informed, believes, and thereon alleges that between October 29, 2018 and the
18 present, each of the Defendants knowingly and intentionally exposed California
19 consumers and users of Spices I, which Defendants manufactured, distributed, or sold as
20 mentioned above, to Cadmium, Lead and Arsenic, without first providing any type of clear
21 and reasonable warning of such to the exposed persons before the time of exposure.
22 Defendants have distributed and sold Spices I in California. Defendants know and intend
23 that California consumers will use and consume Spices I, thereby exposing them to
24 Cadmium, Lead and Arsenic. Further, Plaintiff is informed, believes, and thereon alleges
25 that Defendants are selling Product under a brand or trademark that is owned or licensed
26 by the Defendants or an entity affiliated thereto; have knowingly introduced relevant
27 chemical into product or knowingly caused relevant chemical to be created in Product;

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1 have covered, obscured or altered a warning label that has been affixed to Product by the
2 manufacturer, producer, packager, importer, supplier or distributor of Product; have
3 received a notice and warning materials for exposure from Product without conspicuously
4 posting or displaying the warning materials; and/or have actual knowledge of potential
5 exposure to relevant chemical from Product. Defendants thereby violated Proposition 65.
6 56. The principal routes of exposure are through dermal contact, ingestion and inhalation.
7 Persons sustain exposures by handling/consuming Spices I without wearing gloves or any
8 other personal protective equipment, or by touching bare skin or mucous membranes with
9 gloves after handling Spices I, as well as through direct ingestion of Spices I or breathing
10 in particulate matter dispersed from Spices I.
11 57. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
12 Proposition 65 as to Spices I have been ongoing and continuous, as Defendants engaged
13 and continue to engage in conduct which violates Health and Safety Code Section 25249.6,
14 including the manufacture, distribution, promotion, and sale of Spices I, so that a separate
15 and distinct violation of Proposition 65 occurred each and every time a person was exposed
16 to Cadmium, Lead and Arsenic by Spices I as mentioned herein.
17 58. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
18 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
19 violations alleged herein will continue to occur into the future.
20 59. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00
21 per day per individual exposure to Cadmium, Lead and Arsenic from Spices I, pursuant to
22 Health and Safety Code Section 25249.7(b).
23 60. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
24 filing this Complaint.

25 **FOURTH CAUSE OF ACTION**

26 **(By CONSUMER ADVOCACY GROUP, INC. and against AA MARKET PLACE**
27 **and DOES 31-40 for Violations of Proposition 65, The Safe Drinking Water and**
28 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

1 **Curry Powder**

2 61. Plaintiff repeats and incorporates by reference paragraphs 1 through 60 of this complaint
3 as though fully set forth herein.

4 62. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
5 distributor, promoter, or retailer of Curry Powder (“Spices II”) identified as “**Vinh**
6 **Thuan**”; “**BOT**”; “**Ca Ri Curry Powder**”; “**Net Wt: 10g(0.35 oz)**”; “**UPC 8 934734**
7 **552196**”; “**Made in Vietnam**”

8 a. The scope of this cause of action is limited to the specific lot number and/or batch
9 number of the Spices II.

10 63. Spices II contains Arsenic.

11 64. Defendants knew or should have known that relevant chemical has been identified by the
12 State of California as a chemical known to cause reproductive toxicity and therefore was
13 subject to Proposition 65 warning requirements. Defendants were also informed of the
14 presence of Arsenic in Spices II within Plaintiff’s notice of alleged violations further
15 discussed above at Paragraph 22d.

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

22 66. Plaintiff is informed, believes, and thereon alleges that between November 12, 2018 and
23 the present, each of the Defendants knowingly and intentionally exposed California
24 consumers and users of Spices II, which Defendants manufactured, distributed, or sold as
25 mentioned above, to Arsenic, without first providing any type of clear and reasonable
26 warning of such to the exposed persons before the time of exposure. Defendants have
27 distributed and sold Spices II in California. Defendants know and intend that California
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1 consumers will use and consume Spices II, thereby exposing them to Arsenic. Further,
2 Plaintiff is informed, believes, and thereon alleges that Defendants are selling Product
3 under a brand or trademark that is owned or licensed by the Defendants or an entity
4 affiliated thereto; have knowingly introduced relevant chemical into product or knowingly
5 caused relevant chemical to be created in Product; have covered, obscured or altered a
6 warning label that has been affixed to Product by the manufacturer, producer, packager,
7 importer, supplier or distributor of Product; have received a notice and warning materials
8 for exposure from Product without conspicuously posting or displaying the warning
9 materials; and/or have actual knowledge of potential exposure to relevant chemical from
10 Product. Defendants thereby violated Proposition 65.

11 67. The principal routes of exposure are through dermal contact, ingestion and inhalation.
12 Persons sustain exposures by handling/consuming Spices II without wearing gloves or any
13 other personal protective equipment, or by touching bare skin or mucous membranes with
14 gloves after handling Spices II, as well as through direct ingestion of Spices II or breathing
15 in particulate matter dispersed from Spices II.

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

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

25 70. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00
26 per day per individual exposure to Arsenic from Spices II, pursuant to Health and Safety
27 Code Section 25249.7(b).

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1 71. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

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4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

6 72. A permanent injunction mandating Proposition 65-compliant warnings;

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

8 74. Costs of suit;

9 75. Reasonable attorney fees and costs; and

10 76. Any further relief that the court may deem just and equitable.

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12 Dated: June 30, 2022

YEROUSHALMI & YEROUSHALMI*

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15 /s/ Reuben Yeroushalmi

16 Reuben Yeroushalmi
17 Attorneys for Plaintiff,
18 CONSUMER ADVOCACY GROUP, INC.
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