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County of Alameda
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6 CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ALAMEDA**
9

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

12 Plaintiff,

13 v.
14

15 SUMMIT IMPORT CORPORATION, a
New Jersey Corporation;
16 WALMART, INC., a Delaware Corporation;
17 WALMART.COM USA, LLC, a California
Limited Liability Company;
18 AMAZON.COM SERVICES, LLC, a
Delaware Limited Liability Company;
19 and DOES 1-20,

20 Defendants.
21

CASE NO. **22CV023970**

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)

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25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
26 against defendants SUMMIT IMPORT CORPORATION; WALMART, INC.;
27 WALMART.COM USA, LLC; AMAZON.COM SERVICES, LLC and DOES 1-20 as follows:

28 **THE PARTIES**

YEROUSHALMI
&
YEROUSHALMI
*An Independent
Association of Law
Corporations

- 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 SUMMIT IMPORT CORPORATION (“SUMMIT IMPORT”) is a New
7 Jersey Corporation, qualified to do business in New Jersey and doing business in the
8 State of California at all relevant times herein.
- 9 3. Defendant WALMART, INC. (“WALMART INC.”) is a Delaware Corporation,
10 qualified to do business in Delaware and doing business in the State of California at all
11 relevant times herein.
- 12 4. Defendant WALMART.COM USA, LLC (“WALMART.COM LLC”) is a California
13 Limited Liability Company, qualified to do business in California and doing business in
14 the State of California at all relevant times herein.
- 15 5. Defendant AMAZON.COM SERVICES, LLC (“AMAZON.COM LLC”) is a Delaware
16 Limited Liability Company, qualified to do business in Delaware and doing business in
17 the State of California at all relevant times herein.
- 18 6. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
19 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
20 Complaint to allege their true names and capacities when ascertained. Plaintiff is
21 informed, believes, and thereon alleges that each fictitiously named defendant is
22 responsible in some manner for the occurrences herein alleged and the damages caused
23 thereby.
- 24 7. At all times mentioned herein, the term “Defendants” includes SUMMIT IMPORT,
25 WALMART INC., WALMART.COM LLC, AMAZON.COM LLC, and DOES 1-20.
- 26 8. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
27 times mentioned herein have conducted business within the State of California.

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- 1 9. Upon information and belief, at all times relevant to this action, each of the Defendants,
2 including DOES 1-20, was an agent, servant, or employee of each of the other
3 Defendants. In conducting the activities alleged in this Complaint, each of the
4 Defendants was acting within the course and scope of this agency, service, or
5 employment, and was acting with the consent, permission, and authorization of each of
6 the other Defendants. All actions of each of the Defendants alleged in this Complaint
7 were ratified and approved by every other Defendant or their officers or managing
8 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
9 alleged wrongful conduct of each of the other Defendants.
- 10 10. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
11 Defendants was a person doing business within the meaning of Health and Safety Code
12 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
13 employees at all relevant times.

14 **JURISDICTION**

- 15 11. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
16 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
17 those given by statute to other trial courts. This Court has jurisdiction over this action
18 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
19 violations of Proposition 65 in any Court of competent jurisdiction.
- 20 12. This Court has jurisdiction over Defendants named herein because Defendants either
21 reside or are located in this State or are foreign corporations authorized to do business in
22 California, are registered with the California Secretary of State, or who do sufficient
23 business in California, have sufficient minimum contacts with California, or otherwise
24 intentionally avail themselves of the markets within California through their
25 manufacture, distribution, promotion, marketing, or sale of their products within
26 California to render the exercise of jurisdiction by the California courts permissible
27 under traditional notions of fair play and substantial justice.

1 13. Venue is proper in the County of Alameda because one or more of the instances of
2 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
3 because Defendants conducted, and continue to conduct, business in the County of
4 Alameda with respect to the consumer product that is the subject of this action.

5 **BACKGROUND AND PRELIMINARY FACTS**

6 14. In 1986, California voters approved an initiative to address growing concerns about
7 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
8 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
9 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
10 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
11 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
12 from contamination, to allow consumers to make informed choices about the products
13 they buy, and to enable persons to protect themselves from toxic chemicals as they see
14 fit.

15 15. Proposition 65 requires the Governor of California to publish a list of chemicals known
16 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
17 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
18 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
19 other controls that apply to Proposition 65-listed chemicals.

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

26 17. Proposition 65 provides that any person "violating or threatening to violate" the statute
27 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
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1 25249.7. "Threaten to violate" means "to create a condition in which there is a
2 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
3 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
4 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

5 18. Plaintiff identified certain practices of manufacturers and distributors of Five Spice
6 Powder and Kelp Strips of exposing, knowingly and intentionally, persons in California
7 to Lead and Lead Compounds, Inorganic Arsenic Compounds, and/or Inorganic Arsenic
8 Oxides of such products without first providing clear and reasonable warnings of such to
9 the exposed persons prior to the time of exposure. Plaintiff later discerned that
10 Defendants engaged in such practice.

11 19. On October 1, 1992 the Governor of California added Lead and Lead Compounds
12 ("Lead") to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
13 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
14 twenty (20) months after addition of Lead to the list of chemicals known to the State to
15 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
16 discharge prohibitions.

17 20. On February 27, 1987, the Governor of California added Lead to the list of chemicals
18 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
19 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
20 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
21 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to
22 the State to cause developmental and reproductive toxicity, Lead became fully subject to
23 Proposition 65 warning requirements and discharge prohibitions.

24 21. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
25 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
26 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
27 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
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1 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
2 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
3 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
4 Oxides is hereinafter referred to as “Arsenic”.

5 **SATISFACTION OF PRIOR NOTICE**

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

- 8 a. On or about May 26, 2022, Plaintiff gave notice of alleged violations of Health
9 and Safety Code Section 25249.6, concerning consumer products exposures
10 subject to a private action to SUMMIT IMPORT, WALMART INC.,
11 WALMART.COM LLC, and to the California Attorney General, County
12 District Attorneys, and City Attorneys for each city containing a population of at
13 least 750,000 people in whose jurisdictions the violations allegedly occurred,
14 concerning the Five Spice Powder.
- 15 b. On or about September 9, 2022, Plaintiff gave notice of alleged violations of
16 Health and Safety Code Section 25249.6, concerning consumer products
17 exposures subject to a private action to SUMMIT IMPORT, AMAZON.COM
18 LLC, and to the California Attorney General, County District Attorneys, and
19 City Attorneys for each city containing a population of at least 750,000 people
20 in whose jurisdictions the violations allegedly occurred, concerning the Kelp
21 Strips.

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

9 25. Plaintiff's notice of alleged violations also included a Certificate 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 SUMMIT IMPORT, WALMART INC.,
14 WALMART.COM LLC, AMAZON.COM LLC, and the public prosecutors referenced
15 in Paragraph 22.

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

19 **FIRST CAUSE OF ACTION**

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

23 **Spices**

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 Five Spice Powders ("Five Spice Powder"), identified
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1 as “Yu Yee Brand ®”; “Five Spice Powder”; “Net Wt. 1.76 oz (50 g)”; “Packed for
2 Summit Import Corp.”; “Product of China”; “UPC 0 23452 06072 9”.

3 a. The scope of this cause of action is limited to the specific lot number and/or
4 UPC number 0 23452 06072 9 of PRODUCT.

5 30. Five Spice Powder contains Lead.

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

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

18 33. Plaintiff is informed, believes, and thereon alleges that between May 26, 2019 and the
19 present, each of the Defendants knowingly and intentionally exposed California
20 consumers and users of Five Spice Powder, which Defendants manufactured, distributed,
21 or sold as mentioned above, to Lead, without first providing any type of clear and
22 reasonable warning of such to the exposed persons before the time of exposure.
23 Defendants have distributed and sold Five Spice Powder in California. Defendants know
24 and intend that California consumers will use and consume Five Spice Powder, thereby
25 exposing them to Lead. Further, Plaintiff is
26 informed, believes, and thereon alleges that Defendants are selling Product under a brand
27 or trademark that is owned or licensed by the Defendants or an entity affiliated thereto;

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1 have knowingly introduced Lead into product or knowingly caused Lead to be created in
2 Product; have covered, obscured or altered a warning label that has been affixed to
3 Product by the manufacturer, producer, packager, importer, supplier or distributor of
4 Product; have received a notice and warning materials for exposure from Product
5 without conspicuously posting or displaying the warning materials; and/or have actual
6 knowledge of potential exposure to Lead from Product. Defendants thereby violated
7 Proposition 65.

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

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

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

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

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

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4 **SECOND CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against SUMMIT IMPORT,**
6 **AMAZON.COM LLC, and DOES 11-20 for Violations of Proposition 65, The Safe**
7 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
8 **25249.5, *et seq.*))**

9 **Seaweed**

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

12 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
13 distributor, promoter, or retailer of Kelp Strips (“Kelp Strips”), including but not limited
14 to “Yuho ® From Sungiven Foods”; “Bandes De Varech”; “Kelp Strips”; “Net Wt. 227
15 g (8 oz)”; “Imported by Summit Import Corporation”; “UPC 6 28546 00173 4”.

16 41. Kelp Strips contains Lead and Arsenic.

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

22 43. Plaintiff’s allegations regarding Kelp Strips concerns “[c]onsumer products
23 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
24 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
25 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
26 *25602(b)*. Kelp Strips are consumer products, and, as mentioned herein, exposures to
27 Lead and Arsenic took place as a result of such normal and foreseeable consumption and
28 use.

1 44. Plaintiff is informed, believes, and thereon alleges that between September 9, 2019 and
2 the present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Kelp Strips, which Defendants manufactured, distributed, or sold
4 as mentioned above, to Lead and Arsenic, without first providing any type of clear and
5 reasonable warning of such to the exposed persons before the time of exposure.

6 Defendants have distributed and sold Kelp Strips in California. Defendants know and
7 intend that California consumers will use and consume Kelp Strips, thereby exposing
8 them to Lead and Arsenic. Further, Plaintiff is

9 informed, believes, and thereon alleges that Defendants are selling Product under a brand
10 or trademark that is owned or licensed by the Defendants or an entity affiliated thereto;
11 have knowingly introduced Lead and Arsenic into product or knowingly caused Lead
12 and Arsenic to be created in Product; have covered, obscured or altered a warning label
13 that has been affixed to Product by the manufacturer, producer, packager, importer,
14 supplier or distributor of Product; have received a notice and warning materials for
15 exposure from Product without conspicuously posting or displaying the warning
16 materials; and/or have actual knowledge of potential exposure to Lead and Arsenic from
17 Product. Defendants thereby violated Proposition 65.

18 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.
19 Persons sustain exposures by handling Kelp Strips without wearing gloves or any other
20 personal protective equipment, or by touching bare skin or mucous membranes with
21 gloves after handling Kelp Strips, as well as through direct and indirect hand to mouth
22 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
23 Kelp Strips.

24 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Kelp Strips have been ongoing and continuous, as Defendants
26 engaged and continue to engage in conduct which violates Health and Safety Code
27 Section 25249.6, including the manufacture, distribution, promotion, and sale of Kelp
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1 Strips, so that a separate and distinct violation of Proposition 65 occurred each and every
2 time a person was exposed to Lead and Arsenic by Kelp Strips as mentioned herein.
3 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
4 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
5 violations alleged herein will continue to occur into the future.
6 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to Lead and Arsenic from Kelp Strips,
8 pursuant to Health and Safety Code Section 25249.7(b).
9 49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11
12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

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

19
20 Dated: December 14, 2022

YEROUSHALMI & YEROUSHALMI*

21
22 *Reuben Yeroushalmi*
23 _____
24 Reuben Yeroushalmi
25 Attorneys for Plaintiff,
26 CONSUMER ADVOCACY GROUP, INC.