

1 Reuben Yeroushalmi (SBN 193981)
reuben@yeroushalmi.com

2 Tara Heckard-Bryant (SBN 212534)
tara@yeroushalmi.com

3 **YEROUSHALMI & YEROUSHALMI***
4 9100 Wilshire Boulevard, Suite 240W
5 Beverly Hills, California 90212
6 Telephone: (310) 623-1926
7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,
9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,
14 Plaintiff,

15 v.

16 SAN FERNANDO VALLEY PRODUCE &
17 DELI, INC. DBA VALLEY
18 MARKETPLACE, a California Corporation;
19 OVERSEAS FOOD DISTRIBUTION LLC
20 DBA GOLCHIN., a California Limited
21 Liability Company;
22 and DOES 1-30,

23 Defendants.

CASE NO. 24STCV11295

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
25
26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges three causes of action
27 against defendants SAN FERNANDO VALLEY PRODUCE & DELI, INC. DBA VALLEY
28

1 MARKETPLACE, OVERSEAS FOOD DISTRIBUTION, LLC DBA GOLCHIN and DOES
2 1-30 as follows:

3
4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code Section 25249.7, subdivision (d).
- 10 2. Defendant SAN FERNANDO VALLEY PRODUCE & DELI, INC. DBA VALLEY
11 MARKETPLACE (“VALLEY MARKETPLACE”) is a California Corporation qualified
12 to do business in California and doing business in the State of California at all relevant
13 times herein.
- 14 3. Defendant OVERSEAS FOOD DISTRIBUTION, LLC DBA GOLCHIN (“GOLCHIN”)
15 is a California Limited Liability Company, qualified to do business in California and
16 doing business in the State of California at all relevant times herein.
- 17 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30,
18 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
19 Complaint to allege their true names and capacities when ascertained. Plaintiff is
20 informed, believes, and thereon alleges that each fictitiously named defendant is
21 responsible in some manner for the occurrences herein alleged and the damages caused
22 thereby.
- 23 5. At all times mentioned herein, the term “Defendants” includes VALLEY
24 MARKETPLACE, GOLCHIN, and DOES 1-30.
- 25 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
26 times mentioned herein has conducted business within the State of California.
- 27
28

- 1 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
2 including DOES 1-30, 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 8. 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 9. 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 10. 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 11. Venue is proper in the County of Los Angeles because one or more of the instances of
2 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
3 because Defendants conducted, and continue to conduct, business in the County of Los
4 Angeles with respect to the consumer product that is the subject of this action.

5 **BACKGROUND AND PRELIMINARY FACTS**

6 12. 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 13. 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 14. 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 15. 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* §

28

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 16. Plaintiff identified certain practices of manufacturers and distributors of Stuffed Squid,
6 Mussels, and Sumac of exposing, knowingly and intentionally, persons in California to
7 Lead and Lead Compounds, Cadmium and Cadmium Compounds, of such products
8 without first providing clear and reasonable warnings of such to the exposed persons
9 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such
10 practice.

11 17. 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 18. 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 19. On October 1, 1987 the Governor of California added Cadmium and Cadmium
25 Compounds ("Cadmium") to the list of chemicals known to the State to cause cancer
26 (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections
27 25249.9 and 25249.10, twenty (20) months after addition of Cadmium to the list of
28

1 chemicals known to the State to cause cancer, Cadmium became fully subject to
2 Proposition 65 warning requirements and discharge prohibitions.

3 20. On May 1, 1997, the Governor of California added Cadmium to the list of chemicals
4 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
5 *tit. 27, § 27001(c)*). Cadmium is known to the State to cause developmental, and male
6 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
7 25249.10, twenty (20) months after addition of Cadmium to the list of chemicals known
8 to the State to cause developmental and reproductive toxicity, Cadmium became fully
9 subject to Proposition 65 warning requirements and discharge prohibitions.

10 **SATISFACTION OF PRIOR NOTICE**

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

- 13 a. On or about July 12, 2023, Plaintiff gave notice of alleged violations of Health
14 and Safety Code Section 25249.6, concerning consumer products exposures
15 subject to a private action to VALLEY MARKETPLACE, and to the California
16 Attorney General, County District Attorneys, and City Attorneys for each city
17 containing a population of at least 750,000 people in whose jurisdictions the
18 violations allegedly occurred, concerning the Stuffed Squid.
- 19 b. On or about July 12, 2023, Plaintiff gave notice of alleged violations of Health
20 and Safety Code Section 25249.6, concerning consumer products exposures
21 subject to a private action to VALLEY MARKETPLACE, and to the California
22 Attorney General, County District Attorneys, and City Attorneys for each city
23 containing a population of at least 750,000 people in whose jurisdictions the
24 violations allegedly occurred, concerning the Mussels.
- 25 c. On or about July 31, 2023, Plaintiff gave notice of alleged violations of Health
26 and Safety Code Section 25249.6, concerning consumer products exposures
27 subject to a private action to VALLEY MARKETPLACE, GOLCHIN, and to
28

1 the California Attorney General, County District Attorneys, and City Attorneys
2 for each city containing a population of at least 750,000 people in whose
3 jurisdictions the violations allegedly occurred, concerning the Sumac.

4 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer
5 products involved, the likelihood that such products would cause users to suffer
6 significant exposures to Lead and Cadmium, and the corporate structure of each of the
7 Defendants.

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

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

21 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notice of the alleged violations to VALLEY MARKEYPLACE, GOLCHIN, and
23 the public prosecutors referenced in Paragraph 21.

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

1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against VALLEY**
3 **MARKETPLACE, and DOES 1-10 for Violations of Proposition 65, The Safe**
4 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
5 ***25249.5, et seq.*))**

6 **Seafood Product I**

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

9 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Stuffed Squid, including but not limited to “Bon
11 Appetit”; “Stuffed Squid In American Sauce”; “Net Wt. 4.23 oz (120g)”; “Drained Net
12 Wt. 2.65 oz (75g)”; “Product of Spain”; “Manufactured for: Cofaco Acores SA”; “UPC
13 5601159206784”.

14 29. Stuffed Squid contains Cadmium.

15 30. Defendants knew or should have known that Cadmium has been identified by the State
16 of California as a chemical known to cause cancer, and reproductive toxicity, and
17 therefore was subject to Proposition 65 warning requirements. Defendants were also
18 informed of the presence of Cadmium in Stuffed Squid within Plaintiff’s notice of
19 alleged violations further discussed above at Paragraph 21a.

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

26 32. Plaintiff is informed, believes, and thereon alleges that between July 12, 2020 and the
27 present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Stuffed Squid, which Defendants manufactured, distributed, or
sold as mentioned above, to Cadmium, without first providing any type of clear and

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

14 33. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
15 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
16 and consuming Stuffed Squid, and additionally by handling Stuffed Squid without
17 wearing gloves or any other personal protective equipment, or by touching bare skin or
18 mucous membranes with gloves after handling Stuffed Squid, as well as through direct
19 and indirect hand to mouth contact, hand to mucous membrane, or even breathing in
20 particulate matter dispersed from Stuffed Squid.

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

1 35. 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 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Cadmium from Stuffed Squid, pursuant to
6 Health and Safety Code Section 25249.7(b).

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

9
10 **SECOND CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against VALLEY**
12 **MARKETPLACE, and DOES 11-20 for Violations of Proposition 65, The Safe**
13 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
14 ***25249.5, et seq.*))**

15 **Seafood Product II**

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

18 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Mussels, including but not limited to “Bon Appetit”;
20 “Mussels In Pickled Sauce”; “Net Wt. 4.05 oz (115g)”; “Drained Net Wt. 2.47 oz (70g)”;
21 “Product of Spain”; “Manufactured for: Cofaco Acores SA”; “UPC 5601159206869”.

22 40. Mussels contains Lead and Cadmium.

23 41. Defendants knew or should have known that Lead and Cadmium have been identified
24 by the State of California as chemicals known to cause cancer, and reproductive toxicity
25 and therefore were subject to Proposition 65 warning requirements. Defendants were
26 also informed of the presence of Lead and Cadmium in Mussels within Plaintiff's notice
27 of alleged violations further discussed above at Paragraph 21b.

28 42. Plaintiff's allegations regarding Mussels concerns “[c]onsumer products exposure[s],”
which “is an exposure that results from a person's acquisition, purchase, storage,

1 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
2 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.

3 Mussels are consumer products, and, as mentioned herein, exposures to Lead and
4 Cadmium took place as a result of such normal and foreseeable consumption and use.

5 43. Plaintiff is informed, believes, and thereon alleges that between July 12, 2020 and the
6 present, each of the Defendants knowingly and intentionally exposed California
7 consumers and users of Mussels, which Defendants manufactured, distributed, or sold as
8 mentioned above, to Lead and Cadmium, without first providing any type of clear and
9 reasonable warning of such to the exposed persons before the time of exposure.

10 Defendants have distributed and sold Mussels in California. Defendants know and
11 intend that California consumers will use and consume Mussels, thereby exposing them
12 to Lead and Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
13 Defendants are selling Mussels under a brand or trademark that is owned or licensed by
14 the Defendants or an entity affiliated thereto; have knowingly introduced Lead and
15 Cadmium into Mussels or knowingly caused Lead and Cadmium to be created in
16 Mussels; have covered, obscured or altered a warning label that has been affixed to
17 Mussels by the manufacturer, producer, packager, importer, supplier or distributor of
18 Mussels; have received a notice and warning materials for exposure from Mussels
19 without conspicuously posting or displaying the warning materials; and/or have actual
20 knowledge of potential exposure to Lead and Cadmium from Mussels. Defendants
21 thereby violated Proposition 65.

22 44. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
23 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
24 and consuming Mussels, and additionally by handling Mussels without wearing gloves
25 or any other personal protective equipment, or by touching bare skin or mucous
26 membranes with gloves after handling Mussels, as well as through direct and indirect
27
28

1 hand to mouth contact, hand to mucous membrane, or even breathing in particulate
2 matter dispersed from Mussels.

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

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

12 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to Lead and Cadmium from Mussels, pursuant
14 to Health and Safety Code Section 25249.7(b).

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

17
18 **THIRD CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against VALLEY**
20 **MARKETPLACE, GOLCHIN, and DOES 21-30 for Violations of Proposition 65,**
21 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety***
22 ***Code, §§ 25249.5, et seq.))***

23
24 **Spice**

25 49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 of this complaint
26 as though fully set forth herein.

27 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
28 distributor, promoter, or retailer of Sumac, identified as Golchin"; "Sumac";
"International Spices & Herbs"; "All Natural"; "Premium Quality"; "Net Wt. 3 oz (85
g)"; "Overseas Food Distribution LLC"; "UPC 746646534317".

1 a. The scope of this cause of action is limited to the specific lot number and/or
2 batch number of Sumac.

3 51. Sumac contains Lead.

4 52. Defendants knew or should have known that Lead has been identified by the State of
5 California as a chemical known to cause cancer, and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of Lead in Sumac within Plaintiff's notice of alleged violations further
8 discussed above at Paragraph 21c.

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

15 54. Plaintiff is informed, believes, and thereon alleges that between July 31, 2020 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Sumac, which Defendants manufactured, distributed, or sold as
18 mentioned above, to Lead, without first providing any type of clear and reasonable
19 warning of such to the exposed persons before the time of exposure. Defendants have
20 distributed and sold Sumac in California. Defendants know and intend that California
21 consumers will use and consume Sumac, thereby exposing them to Lead. Further,
22 Plaintiff is informed, believes, and thereon alleges that Defendants are selling Sumac
23 under a brand or trademark that is owned or licensed by the Defendants or an entity
24 affiliated thereto; have knowingly introduced Lead into Sumac or knowingly caused
25 Lead to be created in Sumac; have covered, obscured or altered a warning label that has
26 been affixed to Sumac by the manufacturer, producer, packager, importer, supplier or
27 distributor of Sumac; have received a notice and warning materials for exposure from
28

1 Sumac without conspicuously posting or displaying the warning materials; and/or have
2 actual knowledge of potential exposure to Lead from Sumac. Defendants thereby
3 violated Proposition 65.

4 55. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,
5 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating
6 and consuming Sumac, and additionally by handling Sumac without wearing gloves or
7 any other personal protective equipment, or by touching bare skin or mucous membranes
8 with gloves after handling Sumac, as well as through direct and indirect hand to mouth
9 contact, hand to mucous membrane, or even breathing in particulate matter dispersed
10 from Sumac.

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

17 57. 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 58. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to Lead from Sumac, pursuant to Health and
22 Safety Code Section 25249.7(b).

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

25
26
27
28

1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

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

8

9 Dated: May 6, 2024

YEROUSHALMI & YEROUSHALMI*

10

11 /s/ Reuben Yeroushalmi

12 Reuben Yeroushalmi

13 Attorneys for Plaintiff,

14 CONSUMER ADVOCACY GROUP, INC.

15

16

17

18

19

20

21

22

23

24

25

26

27

28