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10 CONSUMER ADVOCACY GROUP, INC.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
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By: Mar Thomas,
Deputy Clerk

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

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

13 Plaintiff,

14 v.

15 JANS ENTERPRISES CORPORATION, a
16 California Corporation;
17 and DOES 1-10,

18 Defendants.

CASE NO. **25CV107721**

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 \$35,000)

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26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
27 defendants JANS ENTERPRISES CORPORATION, and DOES 1-10 as follows:
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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 JANS ENTERPRISES CORPORATION (“JANS”) is a California Corporation qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, 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.
4. At all times mentioned herein, the term “Defendants” includes JANS, and DOES 1-10.
5. 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.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, 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 each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

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

23 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

23 15. Plaintiff identified certain practices of manufacturers and distributors of Cassava Chips
24 of exposing, knowingly and intentionally, persons in California to Lead and Lead
25 Compounds, of such products without first providing clear and reasonable warnings of
26 such to the exposed persons prior to the time of exposure. Plaintiff later discerned that
27 Defendants engaged in such practice.

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

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

14 **SATISFACTION OF PRIOR NOTICE**

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

17 a. On or about June 19, 2024, Plaintiff gave notice of alleged violations of Health
18 and Safety Code Section 25249.6, concerning consumer products exposures
19 subject to a private action to JANS, and to the California Attorney General,
20 County District Attorneys, and City Attorneys for each city containing a
21 population of at least 750,000 people in whose jurisdictions the violations
22 allegedly occurred, concerning the Cassava Chips.

23 b. On or about August 21, 2024, Plaintiff gave notice of alleged violations of
24 Health and Safety Code Section 25249.6, concerning consumer products
25 exposures subject to a private action to JANS, and to the California Attorney
26 General, County District Attorneys, and City Attorneys for each city containing
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1 a population of at least 750,000 people in whose jurisdictions the violations
2 allegedly occurred, concerning the Cassava Chips.

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

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

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

18 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
19 gave notice of the alleged violations to JANS, and the public prosecutors referenced in
20 Paragraph 18.

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

24 **FIRST CAUSE OF ACTION**

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

28 **Chips**

1 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this complaint
2 as though fully set forth herein.

3 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Cassava Chips, including but not to:

5 i. “jans”; “CASSAVA CHIPS”; “Turmeric”; “Known as Yuca Root”; “PACKED
6 FOR JANS ENTERPRISES CORP.”; “BEST BEFORE: 07.16.2024”; “NET WT.
7 3.52 OZ (100 g)”; “UPC 8 38452 00580 5” and

8 ii. “jans”; “CASSAVA CHIPS”; “Celery”; “Known as Yuca Root”; “PACKED FOR
9 JANS ENTERPRISES CORP.”; “BEST BEFORE 07.16.2024”; “Net wt. 100 g”;
10 “UPC 8 38452 00581 2”.

11 26. Cassava Chips contain Lead.

12 27. Defendants knew or should have known that Lead has been identified by the State of
13 California as a chemical known to cause cancer, developmental toxicity, and
14 reproductive toxicity, and therefore was subject to Proposition 65 warning requirements.
15 Defendants were also informed of the presence of Lead in Cassava Chips within
16 Plaintiff’s notice of alleged violations further discussed above at Paragraph 18a and 18b.

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

23 29. Plaintiff is informed, believes, and thereon alleges that between June 19, 2021 and the
24 present, each of the Defendants knowingly and intentionally exposed California
25 consumers and users of Cassava Chips, which Defendants manufactured, distributed, or
26 sold as mentioned above, to Lead, without first providing any type of clear and
27 reasonable warning of such to the exposed persons before the time of exposure.

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

13 30. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
14 Persons sustain exposures by eating and consuming Cassava Chips.

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

21 32. 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 33. 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 Cassava Chips, pursuant to
26 Health and Safety Code Section 25249.7(b).

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

3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants as follows:

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

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11 Dated: January 22, 2025

YEROUSHALMI & YEROUSHALMI*

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13 */s/ Reuben Yeroushalmi*
14 _____
15 Reuben Yeroushalmi
16 Attorneys for Plaintiff,
17 CONSUMER ADVOCACY GROUP, INC.
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