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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 FORMAGGIO HURON, INC., a
17 Massachusetts Corporation;
18 YTM, INC. dba A PRIORI SPECIALTY
19 FOODS, a Utah Corporation;
20 VIVA OLIVA LLC, a California Limited
21 Liability Company;
22 and DOES 1-20,

23 Defendants.

CASE NO. 26STCV19055

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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25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
26 against defendants FORMAGGIO HURON, INC; YTM, INC.; VIVA OLIVA LLC and DOES
27 1-20 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 FORMAGGIO HURON, INC. (“FORMAGGIO”) is a Massachusetts Corporation doing business in the State of California at all relevant times herein.
3. Defendant YTM, INC. dba A PRIORI SPECIALTY FOODS (“YTM”) is a Utah Corporation doing business in the State of California at all relevant times herein.
4. Defendant VIVA OLIVA LLC (“VIVA”) is a California Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, 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.
6. At all times mentioned herein, the term “Defendants” includes FORMAGGIO, YTM, VIVA, and DOES 1-20.
7. 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.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, 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

1 employment, and was acting with the consent, permission, and authorization of each of
2 the other Defendants. All actions of each of the Defendants alleged in this Complaint
3 were ratified and approved by every other Defendant or their officers or managing
4 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
5 alleged wrongful conduct of each of the other Defendants.

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

10 **JURISDICTION**

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

1 **BACKGROUND AND PRELIMINARY FACTS**

2 13. 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
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
8 from contamination, to allow consumers to make informed choices about the products
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see
10 fit.

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

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

22 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
24 25249.7. "Threaten to violate" means "to create a condition in which there is a
25 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

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

14 **SATISFACTION OF PRIOR NOTICE**

15 19. 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 April 4, 2025, 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 FORMAGGIO and to the California Attorney
20 General, County District Attorneys, and City Attorneys for each city containing
21 a population of at least 750,000 people in whose jurisdictions the violations
22 allegedly occurred, concerning the Calamari.

23 b. On or about April 11, 2025, Plaintiff gave notice of alleged violations of Health
24 and Safety Code Section 25249.6, concerning consumer products exposures
25 subject to a private action to FORMAGGIO 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 Calamari.

3 c. On or about September 5, 2025, Plaintiff gave notice of alleged violations of
4 Health and Safety Code Section 25249.6, concerning consumer products
5 exposures subject to a private action to FORMAGGIO, YTM, and to the
6 California Attorney General, County District Attorneys, and City Attorneys for
7 each city containing a population of at least 750,000 people in whose
8 jurisdictions the violations allegedly occurred, concerning the Calamari.

9 d. On or about September 12, 2025, Plaintiff gave notice of alleged violations of
10 Health and Safety Code Section 25249.6, concerning consumer products
11 exposures subject to a private action to FORMAGGIO, YTM, and to the
12 California Attorney General, County District Attorneys, and City Attorneys for
13 each city containing a population of at least 750,000 people in whose
14 jurisdictions the violations allegedly occurred, concerning the Calamari.

15 e. On or about March 16, 2026, 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 VIVA and to the California Attorney
18 General, County District Attorneys, and City Attorneys for each city containing
19 a population of at least 750,000 people in whose jurisdictions the violations
20 allegedly occurred, concerning the Calamari.

21 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer
22 products involved, the likelihood that such products would cause users to suffer
23 significant exposures to Cadmium, and the corporate structure of each of the Defendants.

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

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

9 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notice of the alleged violations to FORMAGGIO, YTM, VIVA, and the public
11 prosecutors referenced in Paragraph 19.

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

15 **FIRST CAUSE OF ACTION**

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

19 **Seafood Products I**

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

22 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 importer, distributor, promoter, or retailer of Spiced Calamari in Ragout Sauce
24 ("Calamari I"), including but not limited to: "Jose Gourmet"; "SPICED CALAMARI IN
25 RAGOUT SAUCE"; "17. 07. 2027"; "PRODUCT OF SPAIN"; "L23198"; "UPC
26 5600409200374".

27 27. Calamari I contains Cadmium.
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1 28. Defendants knew or should have known that Cadmium has been identified by the State
2 of California as a chemical known to cause reproductive toxicity and therefore was
3 subject to Proposition 65 warning requirements. Defendants were also informed of the
4 presence of Cadmium in Calamari I within Plaintiff's notice of alleged violations further
5 discussed above at Paragraphs 19, 19b, 19c, 19d.

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

12 30. Plaintiff is informed, believes, and thereon alleges that between September 5, 2022 and
13 the present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of Calamari I, which Defendants manufactured, distributed, or sold
15 as mentioned above, to Cadmium, without first providing any type of clear and
16 reasonable warning of such to the exposed persons before the time of exposure.
17 Defendants have distributed and sold Calamari I in California. Defendants know and
18 intend that California consumers will use and consume Calamari I, thereby exposing
19 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
20 Defendants are selling Calamari I under a brand or trademark that is owned or licensed
21 by the Defendants or an entity affiliated thereto; have knowingly introduced Cadmium
22 into Calamari I or knowingly caused Cadmium to be created in Calamari I; have
23 covered, obscured or altered a warning label that has been affixed to Calamari I by the
24 manufacturer, producer, packager, importer, supplier or distributor of Calamari I; have
25 received a notice and warning materials for exposure from Calamari I without
26 conspicuously posting or displaying the warning materials; and/or have actual

1 knowledge of potential exposure to Cadmium from Calamari I. Defendants thereby
2 violated Proposition 65.

3 31. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.

4 Persons sustain exposures by eating and consuming Calamari I.

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

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

14 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to Cadmium from Calamari I, pursuant to
16 Health and Safety Code Section 25249.7(b).

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

19 **SECOND CAUSE OF ACTION**

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

23 **Seafood Products II**

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

26 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
27 importer, distributor, promoter, or retailer of Spiced Calamari in Ragout Sauce
28 ("Calamari II"), including but not limited to: "Jose Gourmet"; "SPICED CALAMARI IN

1 RAGOUT SAUCE”; “29. 04 .2028”; "PRODUCT OF SPAIN"; "L24120"; “UPC
2 5600409200374".

3 38. Calamari II contains Cadmium.

4 39. Defendants knew or should have known that Cadmium has been identified by the State
5 of California as a chemical known to cause reproductive toxicity and therefore was
6 subject to Proposition 65 warning requirements. Defendants were also informed of the
7 presence of Cadmium in Calamari II within Plaintiff’s notice of alleged violations further
8 discussed above at Paragraph 19e.

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

15 41. Plaintiff is informed, believes, and thereon alleges that between March 16, 2023 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Calamari II, which Defendants manufactured, distributed, or sold
18 as mentioned above, to Cadmium, without first providing any type of clear and
19 reasonable warning of such to the exposed persons before the time of exposure.

20 Defendants have distributed and sold Calamari II in California. Defendants know and
21 intend that California consumers will use and consume Calamari II, thereby exposing
22 them to Cadmium. Further, Plaintiff is informed, believes, and thereon alleges that
23 Defendants have covered, obscured or altered a warning label that has been affixed to
24 Calamari II by the manufacturer, producer, packager, importer, supplier or distributor of
25 Calamari II; have received a notice and warning materials for exposure from Calamari II
26 without conspicuously posting or displaying the warning materials; and/or have actual
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1 knowledge of potential exposure to Cadmium from Calamari II. Defendants thereby
2 violated Proposition 65.

3 42. The principal routes of exposure are through ingestion, especially direct (oral) ingestion.
4 Persons sustain exposures by eating and consuming Calamari II.

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

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

14 45. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to Cadmium from Calamari II, pursuant to
16 Health and Safety Code Section 25249.7(b).

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

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20 **PRAYER FOR RELIEF**

21 Plaintiff demands against each of the Defendants as follows:

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

1 Dated: June 15, 2026

YEROUSHALMI & YEROUSHALMI*

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3 */s/ Reuben Yeroushalmi*

4 Reuben Yeroushalmi
5 Attorneys for Plaintiff,
6 CONSUMER ADVOCACY GROUP, INC.
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