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16 **ERIKA MCCARTNEY**

17 **SUPERIOR COURT OF CALIFORNIA**  
18 **COUNTY OF SAN FRANCISCO**

19 **CGC-19-575112**

20 ERIKA MCCARTNEY, in the public interest, )  
21 Plaintiff, )  
22 v. )  
23 WOODSTOCK FARMS MANUFACTURERS, )  
24 D/B/A UNITED NATURAL FOODS, INC.; )  
25 BLUE MARBLE BRANDS, LLC; UNITED )  
26 NATURAL TRADING, LLC; THRIVE )  
27 MARKET, INC. D/B/A THRIVE MARKET )  
28 TECHNOLOGIES; and DOES 1 through 500, )  
inclusive, )  
Defendants. )

CIVIL ACTION NO. CGC-19-  
**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

[Cal. Health and Safety Code sec.  
25249.6, *et seq.*]

BY FAX  
ONELEGALLLC

1 Erika McCartney, in the public interest, based on information and belief and investigation  
2 of counsel, except for information based on knowledge, hereby makes the following allegations.

3 **INTRODUCTION**

4 1. This Complaint seeks to remedy Defendants’ failures to warn individuals in  
5 California that they are being exposed to Lead, a substance known to the State of California to  
6 cause cancer, birth defects or other reproductive harm. Such exposures have occurred, and  
7 continue to occur, through manufacture, distribution, sale and use of Defendants’ “Woodstock  
8 Farms Organic Goji Berries” (hereinafter, “Product”).

9 2. Under California’s Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is  
10 unlawful for business to knowingly and intentionally expose individuals in California to  
11 substances known to the State to cause cancer, birth defects or other reproductive harm without  
12 providing clear and reasonable warnings to individuals prior to exposures. Defendants introduce  
13 the Product contaminated with significant quantities of Lead into the California marketplaces,  
14 exposing consumers to Lead.

15 3. Despite the fact that Defendants expose consumers to Lead, Defendants have,  
16 during the operative period, provided no warnings about the reproductive toxicity associated with  
17 Lead exposures. Defendants’ conduct thus violated the warning provision of Proposition 65,  
18 Health and Safety Code § 25249.6.

19 **PARTIES**

20 4. Plaintiff brings this enforcement action in the public interest pursuant to Health and  
21 Safety Code § 2549.7(d).

22 5. Defendants, Woodstock Farms Manufacturers, d/b/a United Natural Foods, Inc.;  
23 Blue Marble Brands, LLC; United Natural Trading, LLC; and Thrive Market, Inc. d/b/a Thrive  
24 Market Technologies, (herein after collectively referred to as “Defendants”) are Persons in the  
25 course of doing business within the meaning of Health & Safety Code § 25249.11. Defendants  
26 manufacture, distribute, and/or sell the Product for sale and use in California.

27 6. There is unity of interest and ownership among Defendants such that the separate  
28 personalities of the entities do not exist, and to treat them as separate would sanction a fraud or

1 promote injustice to uphold the separateness of the entities. Accordingly, Defendants are the alter  
2 ego of one another.

3 7. Each Defendant sued herein was the principal, agent, or employee of the other, and  
4 was acting within the scope of such agency of or employment. Each Defendant sued herein was  
5 the co-conspirator of the other and was acting within the course and scope of a conspiracy formed  
6 amongst each of them. Each Defendant sued here aided and abetted the other with the intent that  
7 each would be successful in their mutual endeavors. Each Defendant sued herein received money  
8 or property as a result of the conduct described herein without consideration therefore and/or with  
9 knowledge that the money or property was obtained as a result of the wrongful conduct described  
10 herein. Each entity Defendant sued herein is a shell organization, and is actually the alter ego of  
11 the other Defendants sued herein

12 8. The true names of DOES 1 through 500 are unknown to Plaintiff at this time. When  
13 their identities are ascertained, the Complaint shall be amended to reflect their true names.

14 **JURISDICTION AND VENUE**

15 9. The Court has jurisdiction over this action pursuant to Health & Safety Code §  
16 25249.7, which allows enforcement in any court of competent jurisdiction and pursuant to  
17 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
18 other trial courts.

19 10. This Court has jurisdiction over Defendants because they are business entities that  
20 do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally  
21 avail themselves of the California market through the sale, marketing, or use of the Product in  
22 California and/or by having such other contacts with California so as to render the exercise of  
23 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
24 substantial justice.

25 11. Venue is proper in San Francisco County Superior Court because one or more of  
26 the violations arise in San Francisco County, and/or because Defendants have not designated any  
27 principal place of business within the state of California.

1 **BACKGROUND**

2 12. The people of the State of California have declared by initiative under Proposition  
3 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
4 other reproductive harm.” Proposition 65 § 1(b).

5 13. To effectuate this goal, Proposition 65 prohibits exposing people to substances  
6 listed by the State of California as known to cause cancer, birth defects or other reproductive harm  
7 without a “clear and reasonable warning” unless the business responsible for the exposure can  
8 prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent  
9 part:

10 No Person in the course of doing business shall knowingly and intentionally expose any  
11 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
12 first giving clear and reasonable warning to such individual.

13 14. On February 27, 1987, the State of California officially listed Lead as a chemical  
14 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant  
15 under two subcategories: “developmental reproductive toxicity,” which means harm to the  
16 developing fetus, and “male reproductive toxicity,” which means harm to the male reproductive  
17 system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27, 1988, one  
18 year after it was listed as a chemical known to cause reproductive toxicity, Lead became subject  
19 to the clear and reasonable warning requirement regarding reproductive toxicants under  
20 Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

21 15. On October 1, 1992, the State of California officially listed Lead and Lead  
22 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
23 listed as a chemical known to cause cancer, Lead and Lead compounds became subject to the clear  
24 and reasonable warning requirement regarding cancer under Proposition 65. 27 C.C.R. §  
25 27001(c); Health & Safety Code § 25249.10(b).

26 16. There is no safe level of exposure to Lead and even minute amounts of Lead have  
27 been proven harmful to children and adults. *See* Report of the Advisory Committee on Childhood  
28 Lead Poisoning Prevention of the Centers for Disease Control and Prevention, “Low Level Lead

1 Exposure Harms Children: A Renewed Call for Primary Prevention,” January 2, 2012. A study  
2 performed by the California office of Environmental Health Hazard Assessment determined that  
3 exposures to Lead, even at levels previously considered safe, have now been shown to cause  
4 adverse health effects including reduced cognitive ability and significant diminution of intellectual  
5 potential. Carlisle, *et al.*, “A Blood Lead Benchmark for Assessing Risks from Childhood Lead  
6 Exposure,” *Journal of Environmental Science and Health*, 44, 2009. This conclusion is based on  
7 a meta study of 1,333 children who participated in seven international studies. Lanphear, *et al.*,  
8 “Low-Level Environmental Lead Exposure and Children’s Intellectual Function: An International  
9 Pooled Analysis,” *Environmental Health Perspectives*, 113:7, 2005.

10 17. Lead exposures for pregnant women are also of particular concern in light of  
11 evidence that even short-term Lead exposures *in utero* may have long-term harmful effects, Hu,  
12 H., *et al.* “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
13 Development,” *Environmental Health Perspective* 114:11, 2006; Schnaas, Lourdes, *et al.*,  
14 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*  
15 *Health Perspectives* 114:5, 2006. Increased Lead exposure during pregnancy has also been shown  
16 to cause increased risk of premature birth and increased blood pressure in both the mother during  
17 pregnancy and the child after birth. Vigeh, *et al.*, “Blood Lead at Currently Acceptable Levels  
18 May Cause Preterm Labour,” *Occupational Environmental Medicine*, 68:231-234, 2010; Zhang,  
19 *et al.*, “Association Between Prenatal Lead Exposure and Blood Pressure in Children,”  
20 *Environmental Health Perspectives*, 120:3, 2012; Wells, *et al.*, “Low-Level Lead Exposure and  
21 Elevations in Blood Pressure During Pregnancy,” 119:5, 2011.

22 18. The level of exposure to a chemical causing reproductive toxicity under Proposition  
23 65 is determined by multiplying the level in question times the reasonably anticipated rate of  
24 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). For exposures to consumer  
25 products, the level of exposure is calculated using the reasonably anticipated rate of intake or  
26 exposure for average users of the consumer product. 27 C.C.R. § 25281(c)(2).

27 19. Defendants’ Product contains sufficient quantities of Lead such that consumers,  
28 including pregnant women, who consume the Product are exposed to Lead. The primary route of

1 exposure for the violations is direct ingestion when consumers orally ingest the Product. These  
2 exposures occur everywhere in California where the Product is consumed.

3 20. During the relevant one-year period herein, no clear and reasonable warning was  
4 provided with the Product regarding the reproductive hazards of Lead.

5 21. Any person acting in the public interest has standing to enforce violations of  
6 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
7 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
8 within such time. Health & Safety Code § 25249.7(d).

9 22. More than sixty days prior to naming the Defendants therein, Plaintiff provided 60-  
10 Day “Notices of Violation of Proposition 65” to the California Attorney General, the District  
11 Attorneys of every California city with a population greater than 750,000, and to Defendants. In  
12 compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notices  
13 included the following information: (1) the name and address of each violator; (2) the statute  
14 violated; (3) the time period during which violations occurred; (4) specific descriptions of the  
15 violations, including (a) the routes of exposure to the Lead from the Product, and (b) the specific  
16 type of Product sold and used in violation of Proposition 65; and (5) the name of the specific  
17 Proposition 65-listed substance that is the subject of the violations described in each Notice.

18 23. Plaintiff also sent a Certificate of Merit for the Notices to the California Attorney  
19 General, the District Attorneys of every county in California, the City Attorneys of every  
20 California city with a population greater than 750,000 and to each named Defendants. In  
21 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate  
22 certified that Plaintiff’s counsel: (1) has consulted with one or more persons with relevant and  
23 appropriate experience or expertise who reviewed facts, studies or other data regarding the  
24 exposures to Lead alleged in each Notice; and (2) based on the information obtained through such  
25 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement  
26 action based on the facts alleged in each Notice. In compliance with Health & Safety Code §  
27 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General included factual  
28 information—provided on a confidential basis—sufficient to establish the basis for the Certificate

1 including the identity of the person(s) consulted by the Plaintiff's counsel and the facts, studies or  
2 other data reviewed by such persons.

3 24. None of the public prosecutors with the authority to prosecute violations of  
4 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
5 Defendants under Health & Safety Code § 2529.5 *et seq.*, based on the claims asserted in Plaintiff's  
6 Notice.

7 25. Defendants know and intend that individuals in California will use the Product,  
8 thus exposing them to Lead.

9 26. Under Proposition 65, an exposure is "knowing" where the party responsible for  
10 such exposure has:

11 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to  
12 [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that  
13 the...exposure is unlawful is required.

14 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §  
16 12201).

17 27. Defendants have been informed of the Lead in the Product by the 60-Day Notices  
18 of Violation and accompanying Certificate of Merit served on them.

19 28. Defendants also have constructive knowledge that the Product contains Lead due  
20 to the widespread media coverage concerning the problem of Lead in consumer products in  
21 general.

22 29. As entities that manufacture, distribute, and/or sell the Product for use in the  
23 California marketplace, Defendants knew or should have known that the Product contains Lead  
24 and that individuals who use the Product will be exposed to Lead. The exposures to consumers  
25 who use the Product are a natural and foreseeable consequence of Defendants' actions of placing  
26 the Product into the stream of commerce.

27 30. Nevertheless, on information and belief, Defendants continue to expose consumers  
28 to Lead without prior clear and reasonable warnings regarding the reproductive toxicity of Lead.





1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

3 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil  
4 penalties against all Defendants in an amount up to \$2,500 per day for each violation of Proposition  
5 65;

6 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), permanently enjoin  
7 Defendants from offering the Product for sale in California without either reformulating the  
8 Product such that no Proposition 65 warnings are required or providing prior clear and reasonable  
9 warnings, as Plaintiff shall specify in further application to the Court;


10 3. That the Court pursuant to Health & Safety Code § 25249.7(a), order Defendants  
11 to take action to stop ongoing unwarranted exposures to Lead resulting from use of the Product  
12 sold by Defendants, as Plaintiff shall specify in further application to the Court;

13 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
14 applicable statute, theory, rule or doctrine, grant Plaintiff reasonable attorneys' fees and costs of  
15 suit; and

16 5. That the Court grant such other and further relief as may be just and proper.

17  
18 Dated: April 5, 2019

ENVIRONMENTAL LAW FOUNDATION  
LAW OFFICE OF APRIL STRAUSS

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22 By:   
23 April M. Strauss  
24 Attorneys for Plaintiff  
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