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ENDORSED
FILED
San Francisco County Superior Court

AUG 15 2016

CLERK OF THE COURT
BY: MADONNA CARANTO
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

TAMAR KALOUSTIAN, in the public
interest,

Plaintiff,

v.

NAVITAS LLC, a California limited
liability company; and DOES 1
through 100, inclusive,

Defendants.

Civil Action No.:

CGC-16-553700

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

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

BY FAX

KJT LAW GROUP LLP
230 N. Maryland Ave. Suite 306
Glendale, CA 91206

1 Tamar Kaloustian, in the public interest, based on
2 information and belief and investigation of counsel, except for
3 information based on knowledge, hereby makes the following
4 allegations.

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6
7 **INTRODUCTION**

8 1. This Complaint seeks to remedy Defendant's continuing
9 failure to adequately warn individuals in California that they
10 are being exposed to lead, a chemical known to the State of
11 California to cause birth defects and other reproductive harm.
12 Such exposures have occurred, and continue to occur, through the
13 manufacture, distribution, sale and consumption of Defendant's
14 Navitas Naturals Organic Mulberry Berries (the "Product"). The
15 Product is available to consumers in California through a
16 multitude of retail channels including, without limitation (a)
17 third-party traditional brick-and-mortar retail locations; (b)
18 via the internet through Defendant's website; and (c) via the
19 internet through third-party retail websites. Consumers are
20 exposed to lead when they consume the Product.

21
22 2. Under California's Proposition 65, Health and Safety
23 Code § 25249.5, et seq., it is unlawful for businesses to
24 knowingly and intentionally expose individuals in California to
25 chemicals known to the State to cause cancer, birth defects or
26 other reproductive harm without providing clear and reasonable
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1 warnings to individuals prior to their exposure. Defendant
2 introduces a product contaminated with significant quantities of
3 lead into the California marketplace, exposing consumers of the
4 Product to lead.

5
6 3. Despite the fact that the Defendant exposes consumers
7 to lead, Defendant provides no warning, or inadequate warnings
8 about the reproductive hazards associated with lead exposure.
9 Defendant's conduct thus violates the warning provision of
10 Proposition 65, Health & Safety Code § 25249.6.

11 **PARTIES**

12 4. Plaintiff brings this enforcement action in the public
13 interest pursuant to Health & Safety Code § 25249.7(d).

14 5. Defendant NAVITAS LLC ("Navitas") is a person in the
15 course of doing business within the meaning of Health & Safety
16 Code § 25249.11. Navitas manufactures, distributes and/or sells
17 the Product for sale and use in California.

18
19 6. The true names of DOES 1 through 100 are unknown to
20 Plaintiff at this time. When their identities are ascertained,
21 the Complaint shall be amended to reflect their true names.

22 **JURISDICTION AND VENUE**

23
24 7. The Court has jurisdiction over this action pursuant to
25 Health & Safety Code § 25249.7, which allows enforcement in any
26 court of competent jurisdiction, and pursuant to California
27 Constitution Article VI, Section 10, because this case is a cause
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1 not given by statute to other trial courts.

2 8. This Court has jurisdiction over Defendant as a
3 business entity that does sufficient business, has sufficient
4 minimum contacts in California or otherwise intentionally avails
5 itself of the California market through the sale, marketing or
6 use of the Product in California and/or by having such other
7 contacts with California so as to render the exercise of
8 jurisdiction over it by the California courts consistent with
9 traditional notions of fair play and substantial justice.
10

11 9. Venue is proper in San Francisco County Superior Court
12 because one or more of the violations arise in the County of San
13 Francisco.
14

15 **BACKGROUND FACTS**

16 10. The People of the State of California have declared by
17 initiative under Proposition 65 their right "[t]o be informed
18 about exposures to chemicals that cause cancer, birth defects, or
19 other reproductive harm." Proposition 65 § 1(b).

20 11. To effectuate this goal, Proposition 65 prohibits
21 exposing people to chemicals listed by the State of California as
22 known to cause cancer, birth defects or other reproductive harm
23 above certain levels without a "clear and reasonable warning"
24 unless the business responsible for the exposure can prove that
25 it fits within a statutory exemption. Health & Safety Code §
26 25249.6 states in pertinent part:
27

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

4 12. On February 27, 1987, the State of California
5 officially listed lead as a chemical known to cause reproductive
6 toxicity. Lead is specifically identified as a reproductive
7 toxicant under two subcategories: "developmental reproductive
8 toxicity," which means harm to the developing fetus, and "male
9 reproductive toxicity," which means harm to the male reproductive
10 system. 27 California Code of Regulations ("C.C.R.") § 27001(c).
11 On May 1, 1998, one year after it was listed as a chemical known
12 to cause reproductive toxicity, lead became subject to the clear
13 and reasonable warning requirement regarding reproductive
14 toxicants under Proposition 65.

15 13. The level of exposure to a chemical causing
16 reproductive toxicity under Proposition 65 is determined by
17 multiplying the level in question times the reasonably
18 anticipated rate of exposure for an individual to a given medium.
19 27 C.C.R. § 25821(b). for exposures to consumer products, the
20 level of exposure is calculated using the reasonably anticipated
21 rate of intake or exposure for average users of the consumer
22 product. 27 C.C.R. § 25821(C) (2).

23 14. Defendant's Product contains sufficient quantities of
24 lead such that consumers, including pregnant women, who consume
25

1 the Product are exposed to lead. The primary route of exposure
2 for the violations is direct ingestion when consumers orally
3 ingest the Product. These exposures occur in homes, workplaces
4 and everywhere in California where the Product is consumed.

5
6 15. During the relevant one-year period herein, no clear
7 and reasonable warning was provided with the Product regarding
8 the reproductive hazards of lead.

9 16. Any person acting in the public interest has standing
10 to enforce violations of Proposition 65 provided that such person
11 has supplied the requisite public enforcers with a valid 60-Day
12 Notice of Violation and such public enforcers are not diligently
13 prosecuting the action within such time. Health & Safety Code §
14 25249.7(d).

15
16 17. More than sixty days prior to naming each Defendant in
17 this lawsuit, Plaintiff provided a 60-Day "Notice of Violation of
18 Proposition 65" to the California Attorney General, the District
19 Attorneys of every county in California, the City Attorneys of
20 every California city with a population greater than 750,000 and
21 to the named Defendant. In compliance with Health & Safety Code §
22 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
23 following information: (1) the name and address of each violator;
24 (2) the statute violated; (3) the time period during which
25 violations occurred; (4) specific descriptions of the violations,
26 including (a) the routes of exposure to cadmium from the Product,
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1 and (b) the specific type of Product sold and used in violation
2 of Proposition 65; and (5) the name of the specific Proposition
3 65-listed chemical that is the subject of the violations
4 described in each Notice.

5
6 18. Plaintiff also sent a Certificate of Merit for each
7 Notice to the California Attorney General, the District Attorneys
8 of every county in California, the City Attorneys of every
9 California city with a population greater than 750,000 and to the
10 named Defendant. In compliance with Health & Safety Code §
11 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that
12 Plaintiff's counsel: (1) has consulted with one or more persons
13 with relevant and appropriate experience or expertise who
14 reviewed facts, studies or other data regarding the exposures to
15 Lead alleged in each Notice; and (2) based on the information
16 obtained through such consultations, believes that there is a
17 reasonable and meritorious case for a citizen enforcement action
18 based on the facts alleged in each Notice. In compliance with
19 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each
20 Certificate served on the Attorney General included factual
21 information-provided on a confidential basis-sufficient to
22 establish the basis for the Certificate, including the identity
23 of the person(s) consulted by the Plaintiff's counsel and the
24 facts, studies or other data reviewed by such persons.

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26
27 19. None of the public prosecutors with the authority to
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1 prosecute violations of Proposition 65 has commenced and/or is
2 diligently prosecuting a cause of action against Defendants under
3 Health & Safety Code § 25249.5, *et seq.*, based on the claims
4 asserted in each of Plaintiff's Notices.

5
6 20. Defendant both knows and intends that individuals will
7 consume the Product, thus exposing them to lead.

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

10 Knowledge of the fact that a[n]...exposure to a chemical
11 listed pursuant to [Health & Safety Code § 25249.8(a)] is
12 occurring. No knowledge that the... exposure is unlawful is
13 required. 27 C.C.R. § 25102(n). This knowledge may be either
14 actual or constructive. See, e.g., Final Statement of
15 Reasons Revised (November 4, 1988) (pursuant to former 22
16 C.C.R. Division 2, § 12201).

17 22. Defendant has been informed of the lead in their
18 Products by the 60-Day Notice of Violation and accompanying
19 Certificate of Merit served on them.

20 23. Defendant also has constructive knowledge that its
21 Products contain lead due to the widespread media coverage
22 concerning the problem of lead in consumer products.

23 24. As an entity that manufactures, imports, distributes
24 and/or sells the Product for use in the California marketplace,
25 Defendant knows or should know that the Product contains lead and
26 that individuals who consume the Product will be exposed to lead.
27 The lead exposures to consumers who consume the Product are a

1 natural and foreseeable consequence of Defendant's placing the
2 Product into the stream of commerce.

3 25. Nevertheless, Defendant continues to expose consumers
4 to lead without prior clear and reasonable warnings regarding the
5 reproductive hazards of lead.
6

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

9 27. Any person "violating or threatening to violate"
10 Proposition 65 may be enjoined in any court of competent
11 jurisdiction. Health & Safety Code § 25249.7. "Threaten to
12 violate" is defined to mean "to create a condition in which there
13 is a substantial probability that a violation will occur." Health
14 & Safety Code § 25249.11(e). Proposition 65 provides for civil
15 penalties not to exceed \$2,500 per day for each violation of
16 Proposition 65.
17

18 **CAUSE OF ACTION**

19 (Violations of the Health & Safety Code 25249.6)

20 28. Plaintiff realleges and incorporates by reference as if
21 specifically set forth herein Paragraphs 1 through 27, inclusive.
22

23 29. By placing the Product into the stream of commerce,
24 each Defendant is a person in the course of doing business within
25 the meaning of Health & Safety Code § 25249.11.

26 30. Lead is a chemical listed by the State of California as
27 known to cause birth defects and other reproductive harm.
28

1 31. Defendant knows that average use of the Product will
2 expose users of the Product to lead. Defendant intends that the
3 Product be used in a manner that results in exposures to lead
4 from the Products.

5 32. Defendant has failed, and continues to fail, to provide
6 clear and reasonable warnings regarding the reproductive toxicity
7 of lead to users of the Products.
8

9 33. By committing the acts alleged above, Defendant has at
10 all times relevant to this Complaint violated Proposition 65 by
11 knowingly and intentionally exposing individuals to lead without
12 first giving clear and reasonable warnings to such individuals
13 regarding the reproductive toxicity of lead.
14

15 PRAYER FOR RELIEF

16 Wherefore, Plaintiff prays for judgment against Defendant as
17 follows:

18 1. That the Court, pursuant to Health & Safety Code §
19 25249.7(b), assess civil penalties against the Defendant in the
20 amount of \$2,500 per day for each violation of Proposition 65;

21 2. That the Court, pursuant to Health & Safety Code §
22 25249.7(a), preliminarily and permanently enjoin Defendant from
23 offering the Product for sale in California without either
24 reformulating the Products such that no Proposition 65 warnings
25 are required or providing prior clear and reasonable warnings, as
26 Plaintiff shall specify in further application to the Court;
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3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to take action to stop ongoing unwarranted exposures to lead resulting from use of Product sold, as Plaintiff shall specify in further application to the Court;

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

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

Dated: August 15, 2016

KJT LAW GROUP, LLP

By: 

Vache Thomassian
Attorneys for Plaintiff