

1 Caspar Jivalagian, Esq., Bar No.: 282818
2 Vache Thomassian, Esq., Bar No.: 289053
3 **KJT LAW GROUP, LLP**
4 230 N. Maryland Ave. Suite 306
5 Glendale, California 91206
6 Telephone: 1-818-507-8525
7 Facsimile: 1-818-507-8588
8
9 Attorneys for Plaintiff, TAMAR KALOUSTIAN
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Superior Court of California
County of Los Angeles

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Sherril H. Carter, Executive Officer/Clerk
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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TAMAR KALOUSTIAN, in the public
interest,

Civil Action No.:

Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

v.

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

ZB IMPORTING, INC., an Illinois
Corporation; and DOES 1 through 1
through 100, inclusive,

Defendants.

KJT LAWGROUP 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.

5
6 INTRODUCTION

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

21 2. Under California's Proposition 65, Health and Safety
22 Code § 25249.5, et seq., it is unlawful for businesses to
23 knowingly and intentionally expose individuals in California to
24 chemicals known to the State to cause cancer, birth defects or
25 other reproductive harm without providing clear and reasonable
26 warnings to individuals prior to their exposure. Defendant
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1 to the state to cause cancer or reproductive toxicity
2 without first giving clear and reasonable warning to such
individual..

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

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

24 14. Defendant's Product contains sufficient quantities of
25 lead such that consumers, including pregnant women, who consume
26 the Product are exposed to lead. The primary route of exposure
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1 for the violations is direct ingestion when consumers orally
2 ingest the Product. These exposures occur in homes, workplaces
3 and everywhere in California where the Product is consumed.

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

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

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

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

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

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

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

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

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

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

21 24. As an entity that manufactures, imports, distributes
22 and/or sells the Product for use in the California marketplace,
23 Defendant knows or should know that the Product contains lead and
24 that individuals who consume the Product will be exposed to lead.
25 The lead exposures to consumers who consume the Product are a
26 natural and foreseeable consequence of Defendant's placing the
27 Product into the stream of commerce.
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25. Nevertheless, Defendant continues to expose consumers to lead without prior clear and reasonable warnings regarding the reproductive hazards of lead.

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

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

CAUSE OF ACTION

(Violations of the Health & Safety Code 25249.6)

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

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

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

31. Defendant knows that average use of the Product will expose users of the Product to lead. Defendant intends that the

1 Product be used in a manner that results in exposures to lead
2 from the Products.

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

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

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays for judgment against Defendant as
14 follows:
15

16 1. That the Court, pursuant to Health & Safety Code §
17 25249.7(b), assess civil penalties against the Defendant in the
18 amount of \$2,500 per day for each violation of Proposition 65;

19 2. That the Court, pursuant to Health & Safety Code §
20 25249.7(a), preliminarily and permanently enjoin Defendant from
21 offering the Product for sale in California without either
22 reformulating the Products such that no Proposition 65 warnings
23 are required or providing prior clear and reasonable warnings, as
24 Plaintiff shall specify in further application to the Court;

25 3. That the Court, pursuant to Health & Safety Code §
26 25249.7(a), order Defendant to take action to stop ongoing
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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: February 7, 2017

KJT LAW GROUP, LLP

By: 

Vache Thomassian
Attorneys for Plaintiff