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ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**FEB 07 2017**

Sherril R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

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7 **SUPERIOR COURT OF CALIFORNIA**  
8 **COUNTY OF LOS ANGELES**

**BC 6 4 9 8 7 9**

10 TAMAR KALOUSTIAN, in the public  
interest,  
11  
12 Plaintiff,  
13 v.  
14 SUNFLOWER FARMERS MARKETS, LLC;  
15 and DOES 1 through 100,  
16 inclusive,  
17 Defendants.

Civil Action No.:

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES**

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

**KJT LAW GROUP LLP**  
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Glendale, CA 91206

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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 bulk dried apricots (the "Product"). The Product is available to  
14 consumers in California through Defendant's Sprouts Farmers  
15 Market retail locations. Consumers are exposed to lead when they  
16 consume the Product.  
17

18 2. Under California's Proposition 65, Health and Safety  
19 Code § 25249.5, et seq., it is unlawful for businesses to  
20 knowingly and intentionally expose individuals in California to  
21 chemicals known to the State to cause cancer, birth defects or  
22 other reproductive harm without providing clear and reasonable  
23 warnings to individuals prior to their exposure. Defendant  
24 introduces a product contaminated with significant quantities of  
25 lead into the California marketplace, exposing consumers of the  
26 Product to lead.  
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1 minimum contacts in California or otherwise intentionally avails  
2 itself of the California market through the sale, marketing or  
3 use of the Product in California and/or by having such other  
4 contacts with California so as to render the exercise of  
5 jurisdiction over it by the California courts consistent with  
6 traditional notions of fair play and substantial justice.  
7

8 9. Venue is proper in Los Angeles County Superior Court  
9 because one or more of the violations arise in the County of Los  
10 Angeles.

11 **BACKGROUND FACTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 24. As an entity that manufactures, imports, distributes  
21 and/or sells the Product for use in the California marketplace,  
22 Defendant knows or should know that the Product contains lead and  
23 that individuals who consume the Product will be exposed to lead.  
24 The lead exposures to consumers who consume the Product are a  
25 natural and foreseeable consequence of Defendant's placing the  
26 Product into the stream of commerce.

27 25. Nevertheless, Defendant continues to expose consumers  
28 to lead without prior clear and reasonable warnings regarding the



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



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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