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Superior Court Of California
County Of Los Angeles

MAR 13 2018

Sherril M. Daniels, Executive Officer/Clerk
By: Marlon Gomez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BC 697942

HECTOR VELARDE,
Plaintiff,

v.

WESTERN CAREGIVERS PRE-ICO; and
DOES 1 - 25,
Defendants.

Case No.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

By Fax

Plaintiff Hector Velarde ("Plaintiff" or "Velarde") brings this action in the interest of the general public, and on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the continuing failure of Defendant Western Caregivers Pre-ICO ("Western Caregivers") and DOES 1 - 25 (hereinafter individually referred to as "Defendant" or collectively as "Defendants") to warn consumers (including patients) in California that they are being exposed to marijuana smoke, a chemical known to the State of California to cause cancer. According to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code ("H&S Code") § 25249.5 (also known as and referred to hereinafter as "Proposition 65"), businesses must provide persons with a "clear and reasonable

1 warning” before exposing individuals to chemicals known to the State to cause cancer or
2 reproductive harm. Marijuana smoke is referred to hereinafter as the “Listed Chemical.”¹

3 2. Defendants manufacture, package, distribute, market and/or sell in California
4 products containing marijuana intended for smoking, including but not limited to, pre-rolled
5 products, unprocessed and processed marijuana intended to be heated, combusted, then inhaled,
6 and specifically, the flowers, leaves, and other organic parts of marijuana plants (“Products”), the
7 consumption and use of which result in exposure to the Listed Chemical that require a “clear and
8 reasonable” exposure warning under Proposition 65. Defendants exposed consumers, users and
9 patients to the Listed Chemical and have failed to provide the health hazard warnings required
10 under Proposition 65.

11 3. Defendants continued manufacturing, packaging, distributing, marketing and/or
12 sales of the Products without the required health hazard warnings, which causes or threatens to
13 cause, individuals to be involuntarily, unknowingly, and unwittingly exposed to the Listed
14 Chemical in violation of Proposition 65, subjects Defendants to injunctive relief for such conduct
15 as well as civil penalties for each violation. (H&S Code §§ 25249.7(a) & (b)(1).)

16 **PARTIES**

17 4. Plaintiff is a citizen of the State of California acting in the interest of the general
18 public to promote awareness of exposures to toxic chemicals in products sold in California and
19 to improve human health by reducing hazardous substances contained in such items. Velarde is
20 dedicated to, among other causes, providing information to consumers regarding the hazards of
21 toxins in products; protecting public health and drinking water sources by preventing pollution

22 _____
23 ¹ Many of the chemical constituents that have been identified in marijuana smoke are carcinogens.
24 The following 33 marijuana smoke constituents . . . are listed under Proposition 65 as causing
25 cancer: acetaldehyde, acetamide, acrylonitrile, 4-aminobiphenyl, arsenic, benz[a]anthracene,
26 benzene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene,
27 benzofuran, 1,3-butadiene, cadmium, carbazole, catechol, chromium (hexavalent compounds),
28 chrysene, dibenz[a,h,] anthracene, , dibenzo [a,i] pyrene, dibenzo [a,e] pyrene, diethylnitrosamine,
dimethylnitrosamine, formaldehyde, indeno [1,2,3,-c,d] pyrene, isoprene, lead, mercury, 5-
methylchrysene, naphthalene, nickel, pyridine, and quinoline. (Evidence on the Carcinogenicity of
Marijuana Smoke, Office of Environmental Health Hazard Assessment, Reproductive and Cancer
Hazard Assessment Branch, March, 2009 at 5.)

1 and toxics from being discharged, released or emitted into the environment; and enforcing state
2 and federal environmental laws and regulations through citizen suits.

3 5. Velarde is a person within the meaning of H&S Code § 25249.11 and brings this
4 enforcement action in the public interest pursuant to H&S Code § 25249.7(d). H&S Code
5 §25249.7(d) specifies that actions to enforce Proposition 65 may be brought by a person in the
6 public interest, provided certain notice requirements as met and no other public prosecutor is
7 diligently prosecuting an action for the same violation(s).

8 6. Western Caregivers is now, and was at all times relevant herein, a corporation
9 organized under the laws of California and is doing business within the meaning of H&S Code §
10 25249.11 at 654 N. Manhattan Place, Los Angeles, CA 90004.

11 7. Defendants manufacture, package, distribute, market, sell and/or offer the
12 Products for sale or use in the State of California or imply by their conduct that they
13 manufacture, distribute and/or offer the Products for sale or use in the State of California,
14 without first giving a “clear and reasonable” exposure warning the Products contain the Listed
15 Chemical.

16 8. Defendants, separately and each of them, are or were, at all times relevant to the
17 claims in this Complaint and continuing through the present, legally responsible for compliance
18 with the provisions of Proposition 65. Whenever an allegation regarding any act of a Defendant
19 is made herein, such allegation shall be deemed to mean that Defendants, or their agent, officer,
20 director, manger, supervisor, or employee did, or so authorized, such acts while engaged in the
21 affairs of Defendants’ business operations and/or while acting within the course and scope of
22 their employment or while conducting business for Defendant(s) for a commercial, nonprofit or
23 medical purpose.

24 9. In this Complaint, when reference is made to any act of a Defendant, such
25 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
26 representatives of a Defendant acted or authorized such actions and/or negligently failed and
27 omitted to act or adequately and properly supervise, control or direct its employees and agents
28 while engaged in the management, direction, operation or control of the affairs of the business

1 organization. Whenever reference is made to any act of any Defendant, such allegation shall be
2 deemed to mean the act of each Defendant acting individually, jointly and severally as defined
3 by Civil Code § 1430 *et seq.*

4 10. Plaintiff does not know the true names, capacities and liabilities of Defendants
5 DOES Nos. 1 - 25, inclusive, and therefore sues them under fictitious names. Plaintiff will
6 amend this Complaint to allege the true name and capacities of the DOE Defendants upon being
7 ascertained. Each of these Defendants was in some way legally responsible for the acts,
8 omissions and/or violations alleged herein.

9 **JURISDICTION AND VENUE**

10 11. Venue is proper in Los Angeles County Superior Court, pursuant to Code of Civil
11 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
12 because one of more instances of wrongful conduct occurred, and continue to occur, in Los
13 Angeles County, and because Defendants conducted, and continue to conduct, business in this
14 County with respect to the Products.

15 12. This Court has jurisdiction over this action pursuant to California constitution
16 Article VI § 10, which grants the Superior Court “original jurisdiction in all causes except those
17 given by statute to other trial courts.” The statute under which this action is brought does not
18 specify any other court jurisdiction.

19 13. 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 and use of their Products
22 in California, to render the exercise of jurisdiction over them by the California courts consistent
23 with traditional notions of fair play and substantial justice.

24 14. Venue in this action is proper in the Los Angeles County Superior Court because
25 the cause, or part thereof, arises in Los Angeles County since Defendants’ violations occurred
26 (products are marketed, offered for sale, sold, used and/or consumed without clear and
27 reasonable exposure warnings) in this County.

28

1 **STATUTORY BACKGROUND**

2 15. The people of the State of California declared in Proposition 65 their right “[t]o be
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

5 16. To effect this goal, Proposition 65 requires that individuals be provided with a
6 “clear and reasonable warning” before being exposed to substances listed by the State of
7 California as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent
8 part:

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

12 17. An exposure to a chemical in a consumer product is one “which results from a
13 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
14 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
15 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
16 shall provide a warning to any person to whom the product is sold or transferred unless the
17 product is packaged or labeled with a clear and reasonable warning.”

18 18. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
19 more of the following methods individually or in combination:²

- 20 a) A warning that appears on a product’s label or other labeling.
- 21 b) Identification of the product at the retail outlet in a manner which provides a
22 warning. Identification may be through shelf labeling, signs, menus, or a
23 combination thereof.
- 24 c) The warnings provided pursuant to subparagraphs (a) and (b) shall be prominently
25 placed upon a product’s labels or other labeling or displayed at the retain outlet with
26 such conspicuousness, as compared with other words, statements, designs, or devices

26 ² Alternatively, a person in the course of doing business may elect to comply with the warning
27 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
28 2016, and operative on August 30, 2018.

1 in the label, labeling or display as to render it likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use.

3 d) A system of signs, public advertising identifying the system and toll-free information
4 services, or any other system that provides clear and reasonable warnings.

5 19. Proposition 65 provides that any “person who violates or threatens to violate” the
6 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
7 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
8 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
9 penalties of up to \$2,500.00 per day for each violation of the Act. (H&S Code § 25249.7.)

10 **FACTUAL BACKGROUND**

11 20. On December 12, 2007, the Office of Environmental Health Hazard Assessment
12 (OEHHA) announced the selection of the Listed Chemical as a chemical for consideration for
13 listing by the Carcinogen Identification Committee (CIC) in the *California Regulatory Register*.
14 The CIC subsequently determined that Listed Chemical has been clearly shown, through
15 scientifically valid testing according to general accepted principles, to cause cancer.
16 Consequently, on June 19 2009, the Listed Chemical was added to the Proposition 65 list,
17 pursuant to California Code of Regulations § 25305(a)(1) (formerly Title 22, California Code of
18 Regulations, § 12305(a)(1)). In summary, the Listed Chemical was listed under Proposition 65 as
19 a chemical known to the State to cause cancer.

20 21. The consumer exposures that are the subject of this Complaint result from the
21 combustion and inhalation of the Products resulting in exposure to the Listed Chemical, to wit –
22 marijuana smoke and its constituent carcinogens. Consequently, a primary route of exposure to
23 the Listed Chemical contained in marijuana smoke is through direct smoking of the marijuana
24 leaves, flowers, and stems or re-rolled products. A secondary route of exposure to the Listed
25 Chemical contained in marijuana smoke is through exposure to second-hand smoke generated by
26 the smoking of the marijuana leaves, flowers, and stems or pre-rolled products.

27 22. Defendants have manufactured, grown, processed, marketed, distributed, offered
28 to sell and/or sold the Products for use and consumption by inhalation/smoking in California

1 since at least June 14, 2017. The Products continue to be distributed and sold in California
2 without the requisite warning information.

3 23. At all times relevant to this action, Defendants have knowingly and intentionally
4 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
5 giving a clear and reasonable exposure warning to such individuals.

6 24. As a proximate result of acts by Defendants, as persons in the course of doing
7 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
8 California, including in Los Angeles County, have been exposed to the Listed Chemical without
9 a clear and reasonable warning on the Products. The individuals subject to the violative
10 exposures include normal and foreseeable users, consumers and patients that use the Products, as
11 well as all others exposed to the Products.

12 25. On June 20, 2017, Velarde served Western Caregivers and each of the appropriate
13 public enforcement agencies with a document entitled “Notice of Violations of California Health
14 & Safety Code Section 25249.5” that provided Western Caregivers and the public enforcement
15 agencies with notice that Western Caregivers was in violation of Proposition 65 for failing to
16 warn purchasers and individuals using the Products that the use of the Products exposes them to
17 marijuana smoke, a chemical known to the State of California to cause cancer (the “Notice”).

18 26. The Notice was issued pursuant to, and in compliance with, the requirements of
19 H&S Code § 25249.7(d) and the statute’s implementing regulations regarding the notice of the
20 violations to be given to certain public enforcement agencies and to the violator. The Notice
21 included, *inter alia*, the following information; the name, address, and telephone number of the
22 noticing individual; the name of the alleged violator; the statute violated; the approximate time
23 period during which violations occurred; and descriptions of the violations including the
24 chemicals involved, the routes of toxic exposure, and the specific product or type of product
25 causing the violations.

26 27. Western Caregivers was also provided copies of the document entitled “The Safe
27 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is
28 also known as Appendix A to Title 27 of CCR section 25903, via Certified Mail.

1 28. The California Attorney General was provided a copy of the Notice and a
2 Certificate of Merit by attorney for the noticing party, stating that there is a reasonable and
3 meritorious case for this action, and attaching factual information sufficient to establish a basis
4 for the certificate, including the identity of the persons consulted with and relied on by the
5 certifier, and the facts or other data reviewed by those persons, pursuant to H&S Code §
6 25249.11 (h)(2) via online submission.

7 29. After expiration of the sixty (60) day notice period, the appropriate public
8 enforcement agencies have failed to commence and diligently prosecute a cause of action under
9 H&S Code § 25249.5 *et seq.* against Western Caregivers based on the allegations herein.

10 30. Based on information and belief, Western Caregivers has sold multiple strains of
11 buds, flowers and pre-rolled marijuana/cannabis products intended for combustion and inhalation
12 by doctor-recommended “patients” without giving clear and reasonable warnings that smoking
13 medical cannabis can cause cancer. Western Caregivers has sold dozens, if not hundreds, of
14 units of the Products to a Persons³ in the State of California during each and every month from
15 June 14, 2016, through the present, amounting to numerous violative products sold in that period.

16 31. Velarde Plaintiff has engaged in good faith efforts to resolve the herein claims
17 prior to this Complaint.

18 **Basis for Injunctive Relief for Violations of Health and Safety Code § 25249.6, *et seq.***
19 **concerning the Products described in the April 19, 2017, Prop. 65 Notice of Violation**
20 **Against Defendants**

21 32. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 31,
22 inclusive as if specifically set forth herein.

23 33. By committing the acts alleged in this Complaint, Defendants at all times relevant
24 to this action, and continuing through the present, have violated, or threaten to violate, H&S
25 Code § 25249.6 by, in the course of doing business, knowingly and intentionally exposing

26 ³ “Persons” includes natural persons, firms, associations, organizations, partnerships, businesses,
27 trusts, corporations, public entities, joint ventures, and any other incorporated or unincorporated
28 associations, businesses or enterprises.

1 individuals in California to a chemical known to the State of California to cause cancer without
2 first giving “clear and reasonable” exposure warnings to such persons/patients who use or
3 consume the Products containing the Listed Chemical, pursuant to H&S Code § 25249.6 and
4 25249.11(f).

5 34. By committing the acts alleged in this Complaint, Defendants have caused or
6 threaten to cause irreparable harm for which there is no plain, speedy, or adequate remedy at law.
7 In the absence of equitable relief, Defendants will continue to create a substantial risk of
8 irreparable injury by continuing to cause patients and consumers to be involuntarily and
9 unwittingly exposed to cancer-causing marijuana smoke through the foreseeable and/or intended
10 use and/or consumption of the Products.

11 35. By the above-described acts, Defendants have violated, or threaten to violate,
12 H&S Code § 25249.6 and are therefore subject to preliminary and permanent injunctions
13 ordering Defendants to stop violating Proposition 65, to provide warnings to all present and
14 future patients and customers, and possibly be required to provide warnings to Defendants’ past
15 customers who purchased or used the Products without receiving a clear and reasonable warning.

16 36. An action for injunctive relief under Proposition 65 is specifically authorized by
17 H&S Code § 25249.7(a).

18 37. Continuing commission by Defendants of the acts alleged above will irreparably
19 harm the citizens of the State of California, for which harm they have no plain, speedy, or
20 adequate remedy at law.

21 38. In the absence of preliminary and then permanent injunctive relief, Defendants
22 will continue to create a substantial risk to irreparable injury by continuing to cause patients,
23 users and/or consumers to be involuntarily, unknowingly and unwittingly exposed to the Listed
24 Chemical through the use, consumption and/or handling of the Products.

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1 **FIRST CAUSE OF ACTION**

2 **(Civil Penalties for violations of H&S Code § 25249.6, et seq. concerning the Products**
3 **describe in the January 11, 2017, Prop. 65 Notice of Violation Against Defendants)**

4 39. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 38,
5 inclusive as if specifically set forth herein.

6 40. By committing the acts alleged in this Complaint, Defendants at all times relevant
7 to this action, and continuing through the present, have violated or are threatening to violate
8 Health & Safety Code § 25249.6 by, in the course of doing business, knowingly and intentionally
9 exposing individuals in California to a chemical known to the State of California to cause cancer,
10 to wit- marijuana smoke, without first giving clear and reasonable warnings to such persons who
11 us, consume or inhale the Products containing the Listed Chemical, pursuant to H&S Code §§
12 25249.6 and 25249.11(f).

13 41. By the above-described acts, Defendants are liable, pursuant to H&S Code §
14 25249.7(b), for a civil penalty of up to \$2,500.00 per day per violation for each unlawful
15 exposure to the Listed Chemicals contained in the Products. Each exposure discovered within
16 one year of commencing this action subjects Defendants to a separate and additional penalty
17 under H&S Code § 25249.7(b).

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
20 following relief:

- 21 A. A preliminary and permanent injunction, pursuant to H&S Code § 25249.7(b),
22 enjoining Defendants, their agents, employees, assigns and all persons acting in
23 concert or participating with Defendants, from manufacturing, distributing,
24 marketing, processing, selling or offering to sell the Products to patients or
25 consumers in California without first providing a “clear and reasonable warning”
26 regarding the Listed Chemical within the meaning of Proposition 65;
- 27 B. An injunctive order, pursuant to H&S Code § 25249.7(b) and California Code of
28 Regulations, title 27, §§ 25603 and 25603.1, compelling Defendants to provide

1 “clear and reasonable” warnings a the entrance to Defendants’ medical marijuana
2 facility; on Defendants’ website; inside Defendants’ membership agreement; on
3 the labels of the Products; at the point of sale; inside display cases; at concerts and
4 conventions that Defendants participate in; and/or receipts for Products that are
5 delivered to consumers. The warnings should indicate that the Products will
6 expose the user, consumer or patient to chemicals known to the State of California
7 to cause cancer;

8 C. An assessment of civil penalties pursuant to H&S Code § 25249.7(b), against
9 Defendants in the amount of up to \$2,500 per day for each violation of
10 Proposition 65;

11 D. An award to Plaintiff of its reasonable attorneys’ fees and costs of suit pursuant to
12 California Code of Civil Procedure §§ 1032 *et. seq.* and 1021.5; and

13 E. Such other and further relief as may be just and proper.

14 Dated: March 13, 2018

BRODSKY & SMITH, LLC

15 By:  _____

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