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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES**

11 TAMAR KALOUSTIAN, in the public interest,
 12 Plaintiff,

14 v.

15 GUARDIAN DRUG COMPANY, INC., a New
 Jersey Corporation; 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.]

22 Tamar Kaloustian, in the public interest, based on information and belief and investigation of counsel,
 23 except for information based on knowledge, hereby makes the following allegations

INTRODUCTION

25 1. This Complaint seeks to remedy Defendant's continuing failure to adequately warn
 26 individuals in California that they are being exposed to lead, a chemical known to the State of
 27 California to cause birth defects and other reproductive harm. Such exposures have occurred, and
 28 continue to occur, through the manufacture, distribution, sale and consumption of Defendant's

1 Natural Psyllium Husk Fiber (the "Product"). The Product is available to consumers in California
2 through a multitude of retail channels including, without limitation, (a) third-party traditional brick-
3 and-mortar retail locations; (b) via the internet through Defendant's website; and (c) via the internet
4 through third-party retail websites. Consumers are exposed to lead when they consume the Product.

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

11 3. Despite the fact that the Defendant exposes consumers to lead, Defendant provides
12 no warning, or inadequate warnings about the reproductive hazards associated with lead exposure.
13 Defendant's conduct thus violates the warning provision of Proposition 65, Health & Safety Code §
14 25249.6.

15 **PARTIES**

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

18 5. Defendant GUARDIAN DRUG COMPANY, INC. ("GUARDIAN DRUG") is a
19 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.
20 GUARDIAN DRUG manufactures, distributes and/or sells the Product for sale and use in
21 California.

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

24 **JURISDICTION AND VENUE**

25 7. The Court has jurisdiction over this action pursuant to Health & Safety Code §
26 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to California
27 Constitution Article VI, Section 10, because this case is a cause not given by statute to other trial
28

1 courts.

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

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

9 **BACKGROUND FACTS**

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

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

18
19 No person in the course of doing business shall knowingly and intentionally expose any
20 individual to a chemical known to the state to cause cancer or reproductive toxicity without
21 first giving clear and reasonable warning to such individual...

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

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

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

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

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

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

18. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney

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

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

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

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

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

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

23. Defendant also has constructive knowledge that its Products contain lead due to the

widespread media coverage concerning the problem of lead in consumer products.

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

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

32. Defendant has failed, and continues to fail, to provide clear and reasonable warnings

regarding the reproductive toxicity of lead to users of the Products.

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

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against the Defendant in the amount of \$2,500 per day for each violation of Proposition 65;
2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendant from offering the Product for sale in California without either reformulating the Products such that no Proposition 65 warnings are required or providing prior clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;
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: January 29, 2019

KJT LAW GROUP, LLP

By: _____

Caspar Jivlagian, Esq.
Attorneys for Plaintiff
TAMAR KALOUSTIAN