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ENDORSED
FILED
Superior Court of California
County of San Francisco

FEB 14 2019

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

8 Attorneys Plaintiff the Center for Advanced Public Awareness, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ADVANCED PUBLIC
AWARENESS, INC., in the public interest,

Plaintiff,

vs.

MID CITY CANNABIS CLUB, INC. dba LA
BREA COLLECTIVE, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CGC - 19-573796
Case Number:

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health and Safety Code § 25249.5 *et*
seq.)

BY FAX
ONE LEGAL LLC

1 Plaintiff the Center for Advanced Public Awareness, Inc. ("CAPA"), in the public interest,
2 alleges as follows as to matters within its own knowledge, and on information and belief as to all
3 other matters:

4 **INTRODUCTION**

5 1. This action seeks to remedy the alleged failure of Defendant Mid City Cannabis Club,
6 Inc. dba La Brea Collective ("MCC" or "Defendant"), and DOES 1-50 (collectively
7 "Defendants") to warn consumers in California that they are being exposed to Marijuana Smoke,
8 a substance known to the State of California to cause cancer. Such exposures have occurred, and
9 continue to occur, through the manufacture, growth, processing, distribution, sale and consumer
10 use of the marijuana flowers, buds, leaves, stems and other organic parts of the cannabis and
11 marijuana plants (the "Products") intended for combustion via smoking and/or inhalation.
12 California consumers are directly exposed to Marijuana Smoke through the combustion and
13 inhalation of the Products.

14 2. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
15 Safety Code Section 25249.5 *et seq.* (hereinafter "Proposition 65"), it is unlawful for businesses
16 to knowingly and intentionally expose individuals in California to chemicals known to the State
17 to cause cancer and/or birth defects or other reproductive harm above the safe harbor levels,
18 which include the No Significant Risk Levels and/or Maximum Allowable Dose Levels without
19 providing "clear and reasonable" warnings to individuals prior to their exposure.

20 3. Despite the fact that MCC's Products allegedly expose consumers to Marijuana Smoke, it
21 failed to provide any warnings whatsoever about the carcinogenic hazards associated with
22 Marijuana Smoke exposure. Moreover, MCC's continued manufacture, growth, processing,
23 packaging, distribution, marketing, and/or sales of the Products without the required health
24 hazard warnings, causes consumers to be involuntarily, unknowingly and unwittingly exposed to
25 the dangers of Marijuana Smoke in violation of Proposition 65. Thus, Defendants' conduct
26 subjects them to civil penalties and injunctive relief.

1 **JURISDICTION AND VENUE**

2 4. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code §
3 25249.7, which allows enforcement in any court of competent jurisdiction. The California
4 Superior Court has jurisdiction over this action pursuant to California Constitution Article VI,
5 Section 10, which grants the Superior Court “original jurisdiction in all cases except those given
6 by statute to other trial courts.” The statute under which this is brought does not specify any other
7 court with jurisdiction.

8 5. This Court has jurisdiction over Defendants because they are business entities that do
9 sufficient business, have sufficient minimum contacts or otherwise intentionally avail themselves
10 of the California market through the sale, marketing, or use of the Products in the California
11 market and/or by having such other contact with California so as to render the exercise of
12 jurisdiction over them by the California courts consistent with traditional notions of fair play and
13 substantial justice.

14 6. Venue is proper in this Court because, upon information and belief, one or more of the
15 violations arise in San Francisco County.

16 **THE PARTIES**

17 7. CAPA is a non-profit corporation organized under the laws of California acting in the
18 interest of the general public seeking to further, among other causes, the protection of the
19 environment, awareness of dangerous chemicals in consumer products, and corporate
20 accountability. CAPA is a “person” within the meaning of Cal. Health & Safety Code §
21 25249.11(a) and brings this enforcement action in the public interest pursuant to Cal. Health &
22 Safety Code § 25249.7(d).

23 8. CAPA is informed and believes, and thereon alleges, that Defendant MCC is a California
24 entity, which offers the Products for sale into the state of California. MCC is a “person in the
25 course of doing business” within the meaning of Cal. Health & Safety Code § 25249.11(b).

26 9. CAPA is unaware of the true names or capacities of the Defendants sued herein under the
27 fictitious names DOES 1-50, but prays for leave to amend and serve such fictitiously named
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1 Defendants pursuant to California Code of Civil Procedure § 474, once their names and capacities
2 become known.

3 10. CAPA is informed and believes, and thereon alleges, that each and all of the acts and
4 omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-50,
5 each acting as the agent for the other, with legal authority to act on the other's behalf. Upon
6 information and belief, the acts of Defendants were in accordance with, and represent the official
7 policies of Defendants.

8 11. At all times herein mentioned, upon information and belief, the Defendants, and each of
9 them, ratified each and every act or omission complained of herein. At all times herein
10 mentioned, upon information and belief, Defendants, and each of them, aided and abetted the acts
11 and omissions of each and all the other Defendants proximately causing the damages herein
12 alleged.

13 12. CAPA is informed and believes, and thereon alleges, that each of Defendants are in some
14 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
15 and transactions alleged herein.

16 **STATUTORY AND REGULATORY BACKGROUND**

17 13. The People of the State of California declared in Proposition 65 their right "[t]o be
18 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
19 harm." (Section 1(b) of Initiative Measure, Proposition 65).

20 14. To effectuate this goal, Proposition 65 requires that individuals be provided with a "clear
21 and reasonable warning" before being exposed to substances listed by the State of California as
22 causing cancer or reproductive toxicity. Cal. Health and Safety Code §25249.6 states, in pertinent
23 part:

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

28 15. A product exposure to a chemical is one that "results from a person's acquisition,
purchase, storage, consumption, or other reasonably foreseeable use of a product" 27 C.C.R.
§25600(h).

1 16. Proposition 65 provides that any “person who violates or threatens to violate” the statute
2 may be enjoined in a court of competent jurisdiction. Cal. Health & Safety Code §25249.7. The
3 phrase “threaten to violate” is defined to mean creating “a condition in which there is a substantial
4 probability that a violation will occur” Cal. Health & Safety Code §25249.11(e). Violators are
5 liable for civil penalties of up to \$2,500 per day for each violation of the Act. Cal. Health &
6 Safety Code §25249.7.

7 17. On December 12, 2007, the Office of Environmental Health Hazard Assessment
8 (“OEHHA”) announced the selection of Marijuana Smoke as a chemical for consideration for
9 listing by the Carcinogen Identification Committee (“CIC”) in the *California Regulatory Register*.
10 The CIC subsequently determined that Marijuana Smoke has been clearly shown, through
11 scientifically valid testing according to general accepted principles, to cause cancer.
12 Consequently, the State of California officially listed Marijuana Smoke as a chemical known to
13 cause cancer on June 19, 2009, and became subject to the clear and reasonable warning
14 requirement regarding cancer under Proposition 65. 27 C.C.R. §27001(c); Cal. Health & Safety
15 Code §25249.10(b).

16 **STATEMENT OF RELEVANT FACTS**

17 18. CAPA purchased the Products on or around July 23, 2018 from MCC.

18 19. CAPA alleges that MCC has manufactured, grown, processed, marketed, distributed,
19 offered to sell, and/or sold the Products for use and consumption by California consumers

20 20. The Products are intended to be consumed through combustion and inhalation such that
21 individuals who inhale the Products in such manner are exposed to Marijuana Smoke.

22 21. MCC knows and intends that consumers will use the products in the manner stated above,
23 and that they will be exposed to Marijuana Smoke through the intended use of the Products.

24 22. At all times relevant to this action, Defendant, therefore, has knowingly and intentionally
25 exposed the users of the Products to Marijuana Smoke without first giving a clear and reasonable
26 warning to such individuals.

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1 23. CAPA is informed and believes, and thereon alleges, that Defendants have, since August
2 2017, and continuing through the present, exposed consumers to Marijuana Smoke without
3 providing clear and reasonable warnings regarding the cancer hazards of Marijuana Smoke.

4 24. As a proximate result of the acts by Defendants, as persons in the course of doing business
5 within the meaning of Health & Safety Code §25249.11, they have subjected consumers to
6 violative exposures through the normal and foreseeable use of the Products.

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

11 26. On August 17, 2018, CAPA provided a “60-Day Notice of Violation of California Health
12 & Safety Code Section 25249.5 et seq.” (“Notice”) to the California Attorney General, the District
13 Attorneys of every county in California, and the City Attorneys of every California city with a
14 population greater than \$750,000.00. Defendant was also provided a copy of the Notice. The
15 Notice included, *inter alia*, the following information: the name, address, and telephone number of
16 the noticing individual; the name of the alleged violator; the statute violated; the approximate time
17 period during which violations occurred; and descriptions of the violations including the
18 chemicals involved, the routes of toxic exposure, and the specific product or type of product
19 causing the violations. The Notice package to Defendant also included the most recent version of
20 Appendix A, the Final Adopted Regulatory Text for Title 27 of the California Code of
21 Regulations, Section 5903 as amended. In compliance with California Health & Safety Code §
22 25249.7(d) and 11 C.C.R. §3102, CAPA, Plaintiff provided factual information – on a confidential
23 basis – to the Attorney General sufficient to satisfy basis for the Certificate of Merit, including the
24 testing performed by CAPA, and/or its litigation consultants, and the facts, studies, or other data
25 supporting the Certificate.

26 27. After expiration of the sixty (60) day notice period, the appropriate public enforcement
27 agencies have failed to commence and diligently prosecute a cause of action under California
28 Health & Safety Code §25249.5 *et seq.* against Defendant based on the allegations herein.

1 28. CAPA has engaged in good faith efforts to resolve the claims alleged herein prior to filing
2 this complaint, and the parties have reached an agreement in principal to seek a stipulated consent
3 judgment.

4 **FIRST CAUSE OF ACTION**

5 **(Injunctive Relief Pursuant to Cal. Health & Safety Code §25249.5 *et seq.*)**

6 29. CAPA incorporates by reference and re-alleges as if fully stated herein the material
7 allegations set out in paragraphs 1 through 28 inclusive.

8 30. By committing the acts alleged in this Complaint, Defendant at all times relevant to this
9 action, and continuing through the present, has violated California Health & Safety Code
10 §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals in
11 California to chemicals known to the State of California to cause cancer without first giving clear
12 and reasonable warnings to such persons who use or consume Marijuana Smoke, pursuant to
13 California Health & Safety Code §§25249.6 and 25249.11(f).

14 31. By the above-described acts, Defendant has violated California Health & Safety Code
15 §25249.6 and is therefore subject to preliminary and permanent injunctions ordering Defendant to
16 stop violating Proposition 65, to provide warnings to all present and future customers, and to
17 provide warnings to Defendant's past customers who purchased or used the Products without
18 receiving a clear and reasonable warning.

19 32. An action for injunctive relief under Proposition 65 is specifically authorized by California
20 Health & Safety Code §25249.7(a).

21 33. Defendant's actions in selling the Products without clear and reasonable warnings will
22 irreparably harm the citizens of the State of California, for which harm they have no plain, speedy,
23 or adequate remedy at law.

24 34. In the absence of preliminary and then permanent injunctive relief, Defendant will
25 continue to create a substantial risk of irreparable injury by continuing to cause consumers to be
26 involuntarily, unknowingly and unwittingly exposed to Marijuana Smoke through the use, and/or
27 consumption of the Products.

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1 **SECOND CAUSE OF ACTION**

2 **(Civil Penalties Pursuant to Cal. Health & Safety Code §25249.5 et seq)**

3 35. CAPA incorporates by reference and re-alleges as if fully stated herein the material
4 allegations set out in paragraphs 1 through 34, inclusive.

5 36. By committing the acts alleged in this Complaint, Defendant at all times relevant to this
6 action, and continuing through the present, has violated California Health & Safety Code
7 §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals in
8 California to chemicals known to the State of California to cause cancer or reproductive toxicity
9 without first giving clear and reasonable warnings to such persons who use, consume or handle the
10 Products containing Marijuana Smoke, pursuant to California Health & Safety Code §§25249.6
11 and 25249.11(f).

12 37. By engaging in the above-described acts, Defendant is liable, pursuant to California Health
13 & Safety Code §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each
14 unlawful exposure to Marijuana Smoke from the Products in an amount in excess of \$1 million.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, CAPA prays for relief and judgment against Defendant follows:

17 **As to the Causes of Action**

18 1. A preliminary and permanent injunction, pursuant to California Health &
19 Safety Code Code §25249.7(a), enjoining Defendant, its agents, employees, assigns and all
20 persons acting in concert or participating with Defendant, from manufacturing, distributing,
21 marketing or selling the Products in California without either reformulating the Products or
22 providing a clear and reasonable warning, within the meaning of Proposition 65, that the users
23 and/or consumers of the Products are exposed to Marijuana Smoke;

24 2. An Order pursuant to California Health & Safety Code §25249.7(a)
25 compelling Defendant to use best methods to identify and locate each individual who purchased
26 the Products during the statutory period, and to provide a warning to such person that the use of
27 the Products will expose them to chemicals known to cause cancer;

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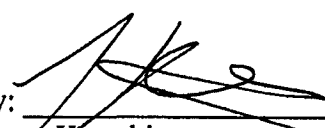
3. An assessment of civil penalties pursuant to California Health & Safety Code §25249.7(b) against Defendant in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

4. For an award to CAPA of its reasonable attorneys' fees and costs of suit incurred herein; and

5. For such equitable or other relief as the Court may deem just and proper.

Dated: February 14, 2019

KAWAHITO LAW GROUP APC

By: 
James Kawahito
Attorneys for Plaintiff
CENTER FOR ADVANCED PUBLIC
AWARENESS, INC.