

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Lia Martin

1 Caspar Jivalagian, Esq., State Bar No.: 282818
2 Vache Thomassian, Esq., State Bar No.: 289053
3 **KJT LAW GROUP, LLP**
4 230 N. Maryland Avenue, Suite 306
5 Glendale, California 91206
6 Telephone: 818-507-8525
7 Facsimile: 818-507-8588

8 Attorneys for Plaintiff,
9 **BERJ PARSEGHIAN**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 **BERJ PARSEGHIAN**, in the public interest,
13 **Plaintiff,**

14 **v.**

15 **Alli & Rose, LLC; and DOES 1 through 100,**
16 **inclusive,**
17 **Defendants.**

Civil Action No.: **21STCV09245**

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

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

KJTLAWGROUP LLP
Jivalagian | Thomassian

1 Berj Parseghian, in the public interest, based on information and belief and investigation of
2 counsel, except for information based on knowledge, hereby makes the following allegations.

3 **INTRODUCTION**

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

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

18 3. Despite the fact that the Defendant exposes consumers to cadmium, Defendant
19 provides no warning, or inadequate warnings about the reproductive hazards associated with
20 cadmium exposure. Defendant's conduct thus violates the warning provision of Proposition 65,
21 Health & Safety Code § 25249.6.

22 **PARTIES**

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

25 5. Defendant ALLI & ROSE, LLC ("ALLI & ROSE") is a person in the course of
26 doing business within the meaning of Health & Safety Code § 25249.11. ALLI & ROSE
27 manufactures, distributes and/or sells the Product for sale and use in California.
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cancer, developmental toxicity and reproductive harm.

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 cadmium such that consumers, including pregnant women, who consume the Product are exposed to cadmium. 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 cadmium.

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 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 cadmium 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.

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

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

18 20. Defendant knows and intends that individuals will consume the Product, thus
19 exposing them to cadmium.

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

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23 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
24 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
25 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
26 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division
27 2, § 12201).

28 22. Defendant has been informed of the cadmium in their Products by the 60-Day

1 Notice of Violation and accompanying Certificate of Merit served on them.

2 23. Defendant also has constructive knowledge that the Products contain cadmium due
3 to the widespread media coverage concerning the problem of cadmium in consumer products.

4 24. As entities that manufacture, import, distribute and/or sell the Product for use in the
5 California marketplace, Defendant knows or should know that the Product contains cadmium and
6 that individuals who consume the Product will be exposed to cadmium. The cadmium exposures
7 to consumers who consume the Product are a natural and foreseeable consequence of Defendant's
8 placing the Product into the stream of commerce.

9 25. Nevertheless, Defendant continues to expose consumers to cadmium without prior
10 clear and reasonable warnings regarding the reproductive hazards of cadmium.

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

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

18 **CAUSE OF ACTION**

19 (Violations of the Health & Safety Code 25249.6)

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

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

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

26 31. Defendant knows that average use of the Product will expose users of the Product to
27 cadmium. Defendant intends that the Product be used in a manner that results in exposures to
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1 cadmium from the Product.

2 32. Defendant has failed, and continues to fail, to provide clear and reasonable warnings
3 regarding the reproductive toxicity of cadmium to users of the Product.

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

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff prays for judgment against Defendant as follows:

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

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

16 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to
17 take action to stop ongoing unwarranted exposures to cadmium resulting from use of Product sold,
18 as Plaintiff shall specify in further application to the Court;

19 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
20 applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and

21 5. That the Court grant such other and further relief as may be just and proper.

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24 Dated: March 5, 2021

KJT LAW GROUP, LLP

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27 By: _____

Tro Krikorian
Attorneys for Plaintiff
BERJ PARSEGHIAN