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CHARLES JAMISON

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHARLES JAMISON, an individual

Plaintiff,

v.

KIVA MANUFACTURING
INCORPORATED, a California corporation;
DRGREEN RX, a California Corporation;
DOES 1-10

Defendants.

Case No. 37-2021-00049535-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Plaintiff Charles Jamison ("Plaintiff") brings this action in the interests of the general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the continuing failure of defendants Kiva Manufacturing, Inc. to warn individuals in California that they are being exposed to a product containing cannabis and/or delta-9-Tetrahydrocannabinol (THC) by their product, Lost Farm Gummies ("Product").

2. California's Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally expose individuals in California to chemicals known to the State to cause cancer, birth defects, or

other reproductive harm without providing clear and reasonable warnings to individuals prior to exposure.

3. When consumers ingest the Products, they are exposed to cannabis and/or delta-9-Tetrahydrocannabinol which require a “clear and reasonable warning” under Proposition 65. Despite this fact, Defendants have failed to provide a clear and reasonable warning to consumers that they are being exposed to the developmentally toxic chemical delta-9-Tetrahydrocannabinol.

4. Defendants' past and continued manufacturing, distribution, and sale of the Product in California, without a clear and reasonable warning, causes individuals to be involuntarily and unwittingly exposed to developmentally toxic delta-9-Tetrahydrocannabinol, which violates Proposition 65.

5. Plaintiff seeks injunctive relief enjoining Defendant from the continued manufacturing, distribution, and/or sales of the Products in California without providing clear and reasonable warnings regarding the risks of developmentally toxicity posed by ingesting delta-9-Tetrahydrocannabinol through consumption of the Products. Plaintiff seeks an injunctive order compelling Defendant to bring their business practices into compliance with Proposition 65 by providing a clear and reasonable warning to each individual who has been and who in the future may be exposed to delta-9-Tetrahydrocannabinol from consumption of the Products. Plaintiff also seeks an order compelling Defendant to identify and locate each individual person who in the past has purchased the Product, and to provide to each such purchaser a clear and reasonable warning that use of the Product will cause exposures to delta-9-Tetrahydrocannabinol.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Health and Safety Code § 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and pursuant to California Constitution Article VII, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other courts.” The causes of actions alleged herein are not given by statute to other trial courts.

7. This Court has jurisdiction over Defendant because Defendant is a business having sufficient minimum contacts with California, or otherwise intentionally availing themselves of the

1 California market through the distribution and sale of the Products in the State of California to
2 render the exercise of jurisdiction over this defendant by the California courts consistent with
3 traditional notions of fair play and substantial justice.

4 8. Venue in this action is proper in the San Diego Superior Court because Defendant
5 has violated or threaten to violate California law in the County of San Diego.

6 **PARTIES**

7 9. Plaintiff Charles Jamison is a resident of San Diego County California and working
8 to protect human health and the environment. Plaintiff is a person with the meaning of Health &
9 Safety Code § 25118 and brings this enforcement action in the public interest pursuant to Health &
10 Safety Code § 25249.7(d).

11 10. Defendant Kiva Manufacturing is a corporation organized under the State of
12 California and is a person doing business with the meaning of Health & Safety Code § 25249.11.
13 DRGREEN RX is a California Corporation organized under the State of California and is a
14 person doing business with the meaning of Health & Safety Code § 25249.11.

15 11. Defendant has manufactured, packaged, distributed, marketed and/or offered the
16 Product for sale or use in California and the County of San Diego. Plaintiff is informed and
17 believes, and thereupon alleges, that Defendant continues to manufacture, package, distribute,
18 market and/or sell the Products in California and in San Diego County.

19 **STATUTORY BACKGROUND**

20 12. The People of the State of California have declared in Proposition 65 their right
21 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
22 reproductive harm.” Section 1(b) of Initiative Measure, Proposition 65.

23 13. To implement this goal, Proposition 65 requires that individuals be provided with a
24 “clear and reasonable warning” before being exposed to substances listed by the State of
25 California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in
26 pertinent part:

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

individual...

14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs. (“CCR”) §§ 25102(n).

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

16. On January 3, 2020, the State of California officially listed the chemical delta-9-Tetrahydrocannabinol as a chemical that is developmentally toxic to become subject to the warning requirement one year later and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning on January 3, 2021. Health & Safety Code § 25249.6 *et seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.*

FACTUAL BACKGROUND

17. Defendant’s Product was purchased in California which ingredients indicate it contains delta-9-Tetrahydrocannabinol but it does not contain a clear and reasonable warning.

18. Because the Product did not contain a warning that was clear and reasonable, on January 6th, 2021, Plaintiff sent a 60-Day Notice of Proposition 65 Violations (“Notice”) to defendant regarding the Product.

19. On the same day they were sent to Defendant, each Notice was also sent to the requisite public enforcement agencies.

20. Each of the Notices described above were issued pursuant to, and in compliance with, the requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violators. Each of the Notices included, *inter alia*, the following information:

1 the name, address, and telephone number of the noticing individuals; the name of the alleged
2 violator; the statute violated; the approximate time period during which violations occurred; and
3 descriptions of the violations, including the chemical involved, the routes of toxic exposure, and
4 the specific product or type of product causing the violations, and was issued as follows:

- 5 a. The relevant Defendant was provided a copy of the Notice by U.S. Mail.
- 6 b. The relevant Defendant was provided a copy of the document entitled "The
7 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
8 Summary," which is also known as Appendix A to Title 27 of Cal. Code Regs §
9 25903.
- 10 c. The California Attorney General was provided a copy of the Notice via online
11 submission.
- 12 d. The California Attorney General was provided with a Certificate of Merit by
13 the attorney for the noticing party, stating that there is a reasonable and
14 meritorious case for this action, and attaching factual information sufficient to
15 establish a basis for the certificate, including the identity of the persons
16 consulted with and relied on by the certified, and the facts, studies, or other data
17 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 18 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
19 which the Product is offered for sale within California were provided with a
20 copy of the Notice pursuant to Health & Safety Code § 25249.7(d)(1).

21 21. At least 60-days have elapsed since Plaintiff sent each of the Notices to Defendants.
22 The appropriate public enforcement agencies have failed to commence and diligently prosecute a
23 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendants based on the
24 allegations herein.

25 22. On information and belief, the Products have been manufactured,
26 distributed, and/or sold by Defendant for consumption in California. On information and belief,
27 the Product continues to be distributed and sold in California without the requisite clear and
28 reasonable warning information.

1 23. At all times relevant to this action, Defendant has knowingly and intentionally
2 exposed the users of the Products to delta-9-Tetrahydrocannabinol without first giving a clear and
3 reasonable warning to such individuals.

4 24. As a proximate result of acts of Defendants as persons in the course of doing
5 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
6 State of California, including the County of San Diego, have been exposed to delta-9-
7 Tetrahydrocannabinol without a clear and reasonable warning. The individuals subject to the
8 illegal exposures include normal and foreseeable users of the Products, as well as all other persons
9 exposed to the Products.

10
11 **FIRST CAUSE OF ACTION**
12 **(Violations of Health and Safety Code § 25249.5, *et seq.*)**

13 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,
14 inclusive, as if specifically set forth herein.

15 26. Defendants are each a person doing business within the meaning of Health &
16 Safety Code § 25249.11.

17 27. Delta-9-Tetrahydrocannabinol is listed on the State of California as a chemical known
18 to be developmentally toxic.

19 28. Defendants have and continue to knowingly and intentionally expose individuals
20 who ingest/use/eat the Products that contain the chemical delta-9-Tetrahydrocannabinol without
21 first providing a clear and reasonable warning to such individuals pursuant to Health & Safety
22 Code §§ 25249.6 and 25249.11(f).

23 29. Continuing commission by Defendant of the acts alleged above will irreparably
24 harm the citizens of the State of California, for which harm they have no plain, speedy, or
25 adequate remedy at law.

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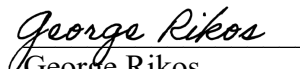
1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for the following relief:

- 3 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §
4 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in
5 concert or participating with Defendants, from distributing or selling the Products in California
6 without first providing a clear and reasonable warning that consumers of the Products are exposed
7 to delta-9-Tetrahydrocannabinol.
- 8 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling
9 Defendant to identify and locate each individual who has purchased the Product and to provide a
10 warning to such persons that consumption/use of the Product will expose the consumers to a
11 chemical known that is developmentally toxic.
- 12 3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)
13 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;
- 14 4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to
15 California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the
16 Court; and,
- 17 5. Such other and further relief as may be just and proper.
- 18

19 DATED: November 23, 2021

LAW OFFICES OF GEORGE RIKOS

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22 George Rikos
23 Attorney for Plaintiff
24 Charles Jamison
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