

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

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

13 v.

14 Whole Foods Market California, Inc., a California
15 Corporation; and DOES 1 through 100, inclusive,

17 Defendants.

Civil Action No.:

21STCV18132

**COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

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

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1 Tamar Kaloustian, in the public interest, based on information and belief and investigation
2 of counsel, except for information based on knowledge, hereby makes the following allegations.
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4 **INTRODUCTION**

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

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

19 3. Despite the fact that the Defendant exposes consumers to lead, Defendant provides
20 no warning, or inadequate warnings about the reproductive hazards associated with lead exposure.
21 Defendant’s conduct thus violates the warning provision of Proposition 65, Health & Safety Code §
22 25249.6.
23

24 **PARTIES**

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

27 5. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. (“WHOLE
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FOODS”) is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. WHOLE FOODS manufactures, distributes and/or sells the Product for sale and use in California.

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

JURISDICTION AND VENUE

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

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

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

BACKGROUND FACTS

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

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

1 in pertinent part:
2

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

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

13 13. The level of exposure to a chemical causing reproductive toxicity under Proposition
14 65 is determined by multiplying the level in question times the reasonably anticipated rate of
15 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). for exposures to consumer
16 products, the level of exposure is calculated using the reasonably anticipated rate of intake or
17 exposure for average users of the consumer product. 27 C.C.R. § 25821(C)(2).

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

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

25 16. Any person acting in the public interest has standing to enforce violations of
26 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
27 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
28 within such time. Health & Safety Code § 25249.7(d).

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

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

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

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

2 21. Under Proposition 65, an exposure is “knowing” where the party responsible for
3 such exposure has:

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5 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
6 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
7 27 C.C.R.§ 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
8 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division
9 2, § 12201).

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

12 23. Defendant also has constructive knowledge that the Products contain lead due to the
13 widespread media coverage concerning the problem of lead in consumer products.

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

19 25. Nevertheless, Defendant continues to expose consumers to lead without prior clear
20 and reasonable warnings regarding the reproductive hazards of lead.

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

23 27. Any person “violating or threatening to violate” Proposition 65 may be enjoined in
24 any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to violate” is
25 defined to mean “to create a condition in which there is a substantial probability that a violation will
26 occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not to
27 exceed \$2,500 per day for each violation of Proposition 65.
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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. Defendants know that average use of the Product will expose users of the Product to lead. Defendants intend that the Product be used in a manner that results in exposures to lead from the Products.

32. Defendants have failed, and continue 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, Defendants have 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 Defendants as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against the Defendants 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 Defendants 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 Defendants to

1 take action to stop ongoing unwarranted exposures to lead resulting from use of Product sold, as
2 Plaintiff shall specify in further application to the Court;

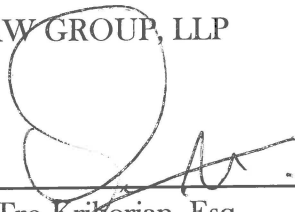
3 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
4 applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and

5 5. That the Court grant such other and further relief as may be just and proper.
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8 Dated: May 13, 2021

KJT LAW GROUP, LLP

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11 By: _____


Tro Krikorian, Esq.
Attorney for Plaintiff
TAMAR KALOUSTIAN