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Attorneys for Plaintiff
ENVIRONMENTAL DEMOCRACY PROJECT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ENVIRONMENTAL DEMOCRACY PROJECT,
a California non-profit corporation,

Plaintiff,

v.

MEXGROCER.COM, LLC; and DOES 1 through
20, inclusive,

Defendants.

FILED BY FAX

ALAMEDA COUNTY

September 10, 2021

CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:

RG21112750

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiff Environmental Democracy Project, in the public interest, based on information
2 and belief and investigation of counsel, except for information based on knowledge, hereby
3 makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead, a chemical known to the State of
7 California to cause cancer, birth defects, and other reproductive harm. Such exposures have
8 occurred, and continue to occur, through the manufacture, distribution, sale, and consumption of
9 saladitos. Saladitos are plums that are dried and covered with salt, sugar, or chili. Saladitos are
10 eaten as candy or snack foods. Saladitos are hereinafter referred to as the "Products." Individuals,
11 including children and pregnant women, are exposed to significant amounts of lead when they
12 consume the Products.

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

19 3. Although Defendants expose consumers to lead in the Products, Defendants
20 provide no warnings about the carcinogenic or reproductive hazards associated with lead
21 exposure. Thus, Defendants' conduct violates Proposition 65. Health & Safety Code § 25249.6.

22 **PARTIES**

23 4. Plaintiff is a California nonprofit corporation dedicated to, among other things,
24 protecting the public's right to know about exposures to harmful chemicals in the food and other
25 consumer products they purchase. Plaintiff is incorporated under the laws of the State of
26 California. Plaintiff is a "person" within the meaning of Health & Safety Code § 25249.11(a) and
27 brings this enforcement action in the public interest pursuant to Health & Safety Code §
28 25249.7(d).

1 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety
2 Code § 25249.6 states, in pertinent part:

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

6 13. Lead was listed as a chemical known to the State of California to cause
7 developmental toxicity in the fetus and male and female reproductive toxicity on February 27,
8 1987. Lead was listed as a chemical known to the State of California to cause cancer on October
9 1, 1992.

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

15 15. Defendants’ Products contain significant quantities of lead such that individuals
16 who consume the Products are exposed to lead. The route of exposure is direct ingestion when
17 consumers eat the Products. These exposures occur in homes, schools, workplaces, and
18 everywhere else throughout California where the products are consumed.

19 16. No clear and reasonable warning is provided with the Products regarding the
20 carcinogenic or reproductive hazards of lead.

21 17. Any person acting in the public interest has standing to enforce violations of
22 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
23 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
24 within such time. Health & Safety Code § 25249.7(d).

25 18. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff
26 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, to
27 the District Attorneys of every county in California, to the City Attorneys of every California city
28 with a population greater than 750,000, and to each of the named Defendants. In compliance with

1 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
2 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
3 time period during which violations occurred; (4) specific descriptions of the violations, including
4 (a) the routes of exposure to lead from the Products, and (b) the specific type of Products sold and
5 used in violation of Proposition 65; and (5) the name of the Proposition 65-listed chemical that is
6 the subject of the violations described in each Notice.

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

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

24 21. Defendants both know and intend that individuals will consume the Products, thus
25 exposing them to lead.

26 22. Under Proposition 65, an exposure is “knowing” where the party responsible for
27 such exposure has:
28

1 knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant
2 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that
the . . . exposure is unlawful is required.

3 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
4 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
5 § 12601).

6 23. As companies that manufacture, import, distribute, or sell the Products for use in
7 the California marketplace, Defendants know or should know that the Products contain lead and
8 that individuals who consume the Products will be exposed to lead. For many years, government
9 entities such as the United States Department of Food and Agriculture and the California
10 Department of Health have issued warnings that the Products contain high levels of lead.

11 24. The lead exposures to consumers who ingest the Products are a natural and
12 foreseeable consequence of Defendants' placing the Products into the stream of commerce.
13 Defendants intend that the Products are directly ingested by consumers, thereby exposing
14 individuals to lead.

15 25. Defendants have been informed of the lead in their Products by the 60-Day Notice
16 of Violation and accompanying Certificate of Merit served on them by Plaintiff.

17 26. Defendants also have constructive knowledge that their Products contain lead due
18 to the widespread media coverage concerning the problem of lead in food products in general.

19 27. Nevertheless, Defendants continue to expose individuals to lead without prior clear
20 and reasonable warnings regarding the carcinogenic or reproductive hazards of lead.

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

23 FIRST CAUSE OF ACTION
24 (Violations of Health & Safety Code § 25249.6)

25 29. Plaintiff realleges and incorporates by reference as if specifically set forth herein
26 the allegations above.

27 30. By placing the Products into the stream of commerce, Defendants are each a
28 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

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Dated: September 10, 2021

Respectfully submitted,

WILLIAMS ENVIRONMENTAL LAW



Lucas Williams
Attorneys for Plaintiff
ENVIRONMENTAL DEMOCRACY PROJECT