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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.

CANDIES TOLTECA; CARDENAS MARKETS,
LLC; and DOES 1 through 20, inclusive,

Defendants.

FILED BY FAX
ALAMEDA COUNTY
September 10, 2021
CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy
CASE NUMBER:
RG21112735

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

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

9 14. Lead was listed as a chemical known to the State of California to cause
10 developmental toxicity in the fetus and male and female reproductive toxicity on February 27,
11 1987. Lead was listed as a chemical known to the State of California to cause cancer on October
12 1, 1992.

13 15. 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”
15 means “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 16. Defendants’ Products contain significant quantities of lead such that individuals
19 who consume the Products are exposed to lead. The route of exposure is direct ingestion when
20 consumers eat the Products. These exposures occur in homes, schools, workplaces, and
21 everywhere else throughout California where the products are consumed.

22 17. No clear and reasonable warning is provided with the Products regarding the
23 carcinogenic or reproductive hazards of lead.

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

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

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

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

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1 22. Defendants both know and intend that individuals will consume the Products, thus
2 exposing them to lead.

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

5 knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant
6 to [Health & Safety 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 2,
9 § 12601).

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

15 25. The lead exposures to consumers who ingest the Products are a natural and
16 foreseeable consequence of Defendants’ placing the Products into the stream of commerce.
17 Defendants intend that the Products are directly ingested by consumers, thereby exposing
18 individuals to lead.

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

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

23 28. Nevertheless, Defendants continue to expose individuals to lead without prior clear
24 and reasonable warnings regarding the carcinogenic or reproductive hazards of lead.

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

27 FIRST CAUSE OF ACTION
28 (Violations of Health & Safety Code § 25249.6)

1 30. Plaintiff realleges and incorporates by reference as if specifically set forth herein
2 the allegations above.

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

5 32. Lead is a chemical listed by the State of California as known to cause cancer and
6 reproductive harm.

7 33. Defendant knows that consumption of the Products will expose individuals to lead.
8 Defendant intends that its Products be used in a manner that results in exposures to lead from the
9 Products.

10 34. Defendants have failed, and continue to fail, to provide clear and reasonable
11 warnings regarding the carcinogenicity or reproductive hazards of lead to people who consume
12 the Products.

13 35. By committing the acts alleged above, Defendants have at all times relevant to this
14 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to lead
15 without first giving clear and reasonable warnings to such individuals regarding the
16 carcinogenicity or reproductive hazards of lead.

17 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

18 **PRAYER FOR RELIEF**

19 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
20 permanently enjoin Defendants from offering Products for sale in California without providing
21 prior clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

22 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants
23 to take action to stop ongoing unwarned exposures to lead resulting from use of Products sold by
24 Defendants, as Plaintiff shall specify in further application to the Court;

25 3. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil
26 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
27 Proposition 65 according to proof;

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

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

Dated: September 10, 2021

Respectfully submitted,

WILLIAMS ENVIRONMENTAL LAW



Lucas Williams
Attorneys for Plaintiff
ENVIRONMENTAL DEMOCRACY PROJECT