

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Keosian

1 Caspar Jivalagian, Esq., State Bar No.: 282818
Vache Thomassian, Esq., State Bar No.: 289053
2 Tro Krikorian, Esq., State Bar No.: 317183
KJT LAW GROUP, LLP
3 230 N. Maryland Avenue, Suite 306
Glendale, California 91206
4 Telephone: 818-507-8525
Facsimile: 818-507-8588

5 Attorneys for Plaintiff,
6 **BERJ PARSEGHIAN**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

11 BERJ PARSEGHIAN, in the public interest,

12 Plaintiff,

13 v.

15 Bob's Red Mill Natural Foods, Inc.; and DOES 1
16 through 100, inclusive,

17 Defendants.

Civil Action No.: 22STCV00086

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

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

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

INTRODUCTION

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

2. Under California’s Proposition 65, Health and Safety Code § 25249.5, et seq., it is unlawful for businesses 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 their exposure. Defendant introduces a product contaminated with significant quantities of lead into the California marketplace, exposing consumers of the Product to lead.

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

PARTIES

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

5. Defendant BOB’S RED MILL NATURAL FOODS, INC. (“BRM”) is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. BRM manufactures, distributes and/or sells the Product for sale and use in California.

1 developmental toxicity and reproductive harm.

2 13. The level of exposure to a chemical causing reproductive toxicity under Proposition
3 65 is determined by multiplying the level in question times the reasonably anticipated rate of
4 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). for exposures to consumer
5 products, the level of exposure is calculated using the reasonably anticipated rate of intake or
6 exposure for average users of the consumer product. 27 C.C.R. § 25821(C)(2).

7 14. Defendant's Product contains sufficient quantities of lead such that consumers,
8 including pregnant women, who consume the Product are exposed to lead. The primary route of
9 exposure for the violations is direct ingestion when consumers orally ingest the Product. These
10 exposures occur in homes, workplaces and everywhere in California where the Product is
11 consumed.

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

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

18 17. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff provided a
19 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District
20 Attorneys of every county in California, the City Attorneys of every California city with a population
21 greater than 750,000 and to the named Defendant. In compliance with Health & Safety Code §
22 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the
23 name and address of each violator; (2) the statute violated; (3) the time period during which
24 violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure
25 to lead from the Product, and (b) the specific type of Product sold and used in violation of
26 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of
27 the violations described in each Notice.
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18. Plaintiff also sent a Certificate of Merit for each Notice 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 11 C.C.R. § 3101, each Certificate certified that Plaintiff's counsel: (1) has consulted with one or more persons with relevant and appropriate experience or expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each Notice; and (2) based on the information obtained through such consultations, believes that there is a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General included factual information-provided on a confidential basis-sufficient to establish the basis for the Certificate, including the identity of the person(s) consulted by the Plaintiff's counsel and the facts, studies or other data reviewed by such persons.

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

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

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

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

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

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

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

7 **PRAYER FOR RELIEF**

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

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

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

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

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

20 5. That the Court grant such other and further relief as may be just and proper.
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23 Dated: January 3, 2022

KJT LAW GROUP, LLP

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26 By: _____

Tro Krikorian
Attorneys for Plaintiff
BERJ PARSEGHIAN