Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Meiers

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

Attorneys for Plaintiff,
BERJ PARSEGHIAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BERJ PARSEGHIAN, in the public interest,

Plaintiff,

v.

Living Intentions, LLC; Whole Foods Market California, Inc., a California Corporation; and DOES 1 through 100, inclusive,

Defendants.

Civil Action No.: 22STCV33620

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

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

KJT LAW GROUP LLP Jivalagian | Thomassian

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 Defendants' continuing failure to adequately warn individuals in California that they are being exposed to lead and cadmium, a chemical known to the State of California to cause cancer and other reproductive harm. Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale and consumption of Defendants' Living Intentions - Activated Superfood Cereal - Cacao Crunch; UPC #: 8 13700 02001 4 (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 Defendants' website; and (c) via the internet through third-party retail websites. Consumers are exposed to lead and cadmium 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. Defendants introduce a product contaminated with significant quantities of lead and cadmium into the California marketplace, exposing consumers of the Product to lead and cadmium.

3. Despite the fact that the Defendants expose consumers to lead and cadmium, Defendants provide no warning, or inadequate warnings about the reproductive hazards associated with lead and cadmium exposure. Defendants' 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 LIVING INTENTIONS, LLC ("LIVING INTENTIONS") is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11 LIVING INTENTIONS manufactures, distributes and/or sells the Product for sale and use in California.

6. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. ("WHOLE 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.

7. 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

8. 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.

9. This Court has jurisdiction over Defendants as business entities that do sufficient business, have 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 them by the California courts consistent with traditional notions of fair play and substantial justice.

10. 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

11. 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).

12. 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 in pertinent part:

> No person in the course of doing business shall knowingly and intentionally 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...

13. The State of California has officially listed cadmium as a chemical known to cause cancer and reproductive harm.

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

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

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

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

18. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff

provided a 60-Day "Notice of Violation of Proposition 65" 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 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the name and address of each violator; (2) the statute violated; (3) the time period during which violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure to lead and cadmium from the Product, and (b) the specific type of Product sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of the violations described in each Notice.

19. 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 Defendants. 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 and cadmium 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.

20. 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 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of Plaintiff's Notices.

21. Defendants both know and intend that individuals will consume the Product, thus

exposing them to lead and cadmium.

22. 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).

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

24. Defendants also have constructive knowledge that the Products contain lead cadmium due to the widespread media coverage concerning the problem of lead and cadmium in consumer products.

25. As entities that manufacture, import, distribute and/or sell the Product for use in the California marketplace, Defendants know or should know that the Product contains lead and cadmium and that individuals who consume the Product will be exposed to lead and cadmium. The lead exposures to consumers who consume the Product are a natural and foreseeable consequence of Defendant's placing the Product into the stream of commerce.

26. Nevertheless, Defendants continue to expose consumers to lead without prior clear and reasonable warnings regarding the reproductive hazards of lead and cadmium.

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

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

CAUSE OF ACTION

(Violations of the Health & Safety Code 25249.6)

29. Plaintiff realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 27, inclusive.

30. 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.

31. Lead and cadmium are chemicals listed by the State of California as known to cause cancer and other reproductive harm.

32. Defendants know that average use of the Product will expose users of the Product to lead and cadmium. Defendants intend that the Product be used in a manner that results in exposures to lead and cadmium from the Products.

33. Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the reproductive toxicity of lead and cadmium to users of the Products.

34. 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 and cadmium without first giving clear and reasonable warnings to such individuals regarding the reproductive toxicity of lead and cadmium.

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

4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory or doctrine, grant Plaintiff her 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: October 14, 2022

KJT LAW GROUP, LLP

By: _____
Tro Krikorian, Esq.
Attorneys for Plaintiff
BERJ PARSEGHIAN

KJT LAWGROUP LLP Jivalagian | Thomassian