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8 KEEP AMERICA SAFE AND BEAUTIFUL

ELECTRONICALLY
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Superior Court of California,
County of San Francisco

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Clerk of the Court
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Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

CGC-23-604320

12 KEEP AMERICA SAFE AND BEAUTIFUL,

13 Plaintiff,

14 v.

15 TRIUNFO FOODS IMPORT & EXPORT
16 CORP.; THE SEABRA GROUP, LLC; A&J
17 SEABRAS SUPERMARKET, INC.; and
18 DOES 1-30, inclusive,

19 Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health & Safety Code § 25249.5 *et*
seq.)

UNLIMITED CIVIL

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
2 cause of action against Defendants TRIUNFO FOODS IMPORT & EXPORT CORP., THE
3 SEABRA GROUP, LLC, A&J SEABRAS SUPERMARKET, INC., and DOES 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. This Complaint is a representative action brought by plaintiff Keep America Safe and
6 Beautiful (“**KASB**”) in the public interest of the citizens of the State of California to enforce the
7 People’s right to be informed of the health hazards caused by exposures to Lead, a heavy metal found
8 in and on the cassava flour manufactured, imported, distributed, sold or offered for sale by
9 Defendants in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
12 (“**consumers**”) they are being exposed to Lead, a substance known to the State of California to cause
13 birth defects or other reproductive harm when they ingest or handle Defendants’ cassava flour.

14 3. Detectable levels of Lead are found in and on the cassava flour that Defendants
15 manufacture, import, sell or distribute for sale to individuals throughout California.

16 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
17 Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course
18 of doing business to knowingly and intentionally expose consumers in California to chemicals known
19 to the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear
20 and reasonable” health hazard warning to such individuals prior to purchase or use.

21 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and
22 offer for sale, in and into California cassava flour (“**PRODUCTS**”) containing Lead, without
23 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to
24 the chemical, including, but not limited to, *Julia - Cassava Flour White - 35.2oz (PACK OF 02) |*
25 *Farinha de Mandioca Branca Crua - 1Kg; ASIN B00JRU76LK*. Defendants’ conduct subjects them
26 to civil penalties for each violation, enjoinder as well as preliminary and permanent injunctive
27 relief. Health & Safety Code § 25249.7(a) and (b).

28 ///

1 **PARTIES**

2 6. Plaintiff KASB is a non-profit corporation organized under the laws of California and
3 acting in the interest of the general public, dedicated to protecting the health of California citizens and
4 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
5 consumer products and to increasing public awareness of those chemicals through the promotion of
6 sound environmental practices and corporate responsibility. KASB is a person within the meaning of
7 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to
8 Health and Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
10 TRIUNFO FOODS IMPORT & EXPORT CORP. (“**TRIUNFO**”) was and is a “person” “in the
11 course of doing business” within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

12 8. TRIUNFO manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
13 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
14 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

15 9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant THE
16 SEABRA GROUP, LLC (“**SEABRA**”) was and is a “person” “in the course of doing business”
17 within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

18 10. SEABRA manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
19 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
20 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California

21 11. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant A&J
22 SEABRAS SUPERMARKET, INC. (“**A&J**”) was and is a “person” “in the course of doing business”
23 within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

24 12. A&J manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or
25 use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells,
26 and/or offers the PRODUCTS for sale or use in the State of California

27 13. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person in
28 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

1 MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or
2 each implies by its conduct that it does such for one or more of the PRODUCTS offered for sale or
3 use in California.

4 14. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in the
5 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
6 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each
7 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
8 retailers for sale or use in the State of California

9 15. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
10 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
11 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
12 for sale to individuals in the State of California.

13 16. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown
14 to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant to Code of
15 Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of the
16 fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged
17 herein and the damages caused thereby. When ascertained, their true names and capacities shall be
18 reflected in an amended complaint.

19 17. At all times mentioned herein, TRIUNFO, SEABRA, A&J, MANUFACTURER
20 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
21 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

22 **JURISDICTION AND VENUE**

23 18. This Court has jurisdiction over this action, pursuant to Health & Safety Code
24 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
25 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
26 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
27 other trial courts.” The statute under which this action is brought does not specify any other basis of
28 subject matter jurisdiction.

1 19. The California Superior Court has jurisdiction over DEFENDANTS, based on plaintiff's
2 information and good faith belief DEFENDANTS are each a person, firm, corporation or association
3 that is a citizen of the State of California, does sufficient business in California, has sufficient
4 minimum contacts in California, and/or otherwise purposefully and intentionally avail themselves of
5 the California market through their manufacture, importation, distribution, promotion, marketing or
6 sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders the exercise of
7 personal jurisdiction by California courts consistent with traditional notions of fair play and
8 substantial justice.

9 20. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code
10 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
11 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
12 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
13 conducted, and continue to conduct, business in the County of San Francisco with respect to the
14 PRODUCTS that are the subject of this action.

15 **REGULATORY BACKGROUND AND LAW**

16 21. In 1986, the people of the State of California approved an initiative addressing the harms
17 caused by hazardous chemicals and declared their right "[t]o be informed about exposures to
18 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed
19 General Law, Gen, Elec. (Nov. 4, 1986) at p.3.

20 22. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
21 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, "[n]o
22 person in the course of doing business shall knowingly and intentionally expose any individual to a
23 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
24 warning to such individual..."

25 23. Under the Act, a "person in the course of doing business" is defined as a business with
26 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
27 exposing individuals to hazardous chemicals without first giving a "clear and reasonable" warning.
28 Health & Safety Code § 25249.6.

1 24. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
2 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. Cal. Code
3 Regs. (“CCR”), tit. 27, § 25102(i). An exposure to a hazardous chemical is defined as that which
4 “results from a person’s acquisition, purchase, storage, consumption or other reasonably foreseeable
5 use of a product...” 27 CCR § 25600(h).

6 25. Under Proposition 65, persons violating the statute may be enjoined in any court of
7 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
8 Health & Safety Code § 25249.7.

9 26. On February 27, 1987, pursuant to Proposition 65’s implementing regulations,
10 California identified and listed Lead as a chemical known to the State cause birth defects and
11 reproductive harm or reproductive toxicity. Lead became subject to the “clear and reasonable
12 warning” requirements one year later, on February 27, 1988. 27 CCR § 27001(c); Health & Safety
13 Code §§ 25249.8, 25249.10(b).

14 27. On October 1, 1992, pursuant to Proposition 65’s implementing regulations, California
15 identified and listed Lead as a chemical known to the State cause cancer. Lead became subject to the
16 “clear and reasonable warning” requirements one year later, on October 1, 1993. Cal. Code Regs.
17 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

18 **STATEMENT OF FACTS**

19 28. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

20 29. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab, and
21 consulted with a person with relevant and appropriate knowledge and expertise, who, after reviewing
22 the collected data and analyzing the risk of exposure to Lead, determined the PRODUCTS subject
23 consumers in California to exposure to the listed chemical at levels requiring a warning under the
24 statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their
25 reasonably foreseeable and intended usages.

26 30. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
27 there was a reasonable and meritorious case for this private action and included the factual
28

1 information supporting the certificate when it served the notice on the California Attorney General's
2 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

3 31. Thereafter, on February 25, 2022, plaintiff served a 60-Day Notice of Violation
4 ("Notice"), together with the certificate of merit, on TRIUNFO, SEABRA, A&J, the California
5 Attorney General's Office, and the requisite public enforcement agencies, alleging, as a result of
6 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being
7 exposed to Lead through their reasonably foreseeable use of the PRODUCTS as intended without
8 first receiving a "clear and reasonable warning," as required by Proposition 65.

9 32. After receiving plaintiff's Notice, no public enforcement agency has commenced and is
10 diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce the
11 alleged violations that are the subject of the Notice.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of Proposition 65 - Against All DEFENDANTS)**

14 33. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
15 set forth in Paragraphs 1 through 32, inclusive.

16 34. DEFENDANTS' PRODUCTS contain Lead in levels requiring a clear and reasonable
17 warning under Proposition 65.

18 35. DEFENDANTS know or should have known the PRODUCTS they manufacture,
19 import, distribute, sell, and offer for sale in California contain Lead. As a result of plaintiff's Notice,
20 DEFENDANTS also have actual knowledge of the presence of Lead in the PRODUCTS.

21 36. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
22 sale in or into the State of California cause exposures to Lead, both direct and/or indirect dermal
23 contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

24 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
25 continues to cause, exposures to Lead.

26 38. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
27 exposes individuals to Lead through direct and indirect dermal contact and/or ingestion.
28

1 39. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the
2 PRODUCTS will occur by their deliberate, non-accidental participation in the California marketplace.

3 40. The exposures to Lead, caused by DEFENDANTS and endured by consumers in
4 California, are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

5 41. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
6 in California who have been, or who will be, exposed to Lead through direct and indirect dermal
7 contact and/or ingestion resulting from the use of the PRODUCTS as intended.

8 42. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
9 exposed to Lead through dermal contact and ingestion from their consumption of the PRODUCTS
10 that DEFENDANTS sold without a “clear and reasonable” health hazard warning have suffered, and
11 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

12 43. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale
13 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
14 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are
15 ongoing and continuous in nature and, unless enjoined, will continue in the future.

16 44. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
17 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
18 per day for each violation.

19 45. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) also
20 specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

21 **PRAYER FOR RELIEF**

22 Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,
23 as follows:

24 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
25 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
26 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
27 reasonable warning” to consumers addressing the harms associated with exposures to Lead;
28

1 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and
2 permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of
3 commerce in California that do not bear a clear and reasonable health hazard warning;

4 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the
5 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

6 4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred
7 herein; and


8 5. That the Court grant any further relief as it deems just and equitable.

9 Dated: January 27, 2023

Respectfully submitted,

SEVEN HILLS LLP

11
12 By: _____


Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful