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

11 BERJ PARSEGHIAN, in the public interest,
12
13 Plaintiff,

14 v.

15 Sprouts Farmers Market, Inc.; and DOES 1
16 through 100, inclusive,

17 Defendants.

Civil Action No.: **22STCV36470**

**COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

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

KJT LAWGROUP ^{LLP}
Jivalagian | Thomassian

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

3 **INTRODUCTION**

4 1. This Complaint seeks to remedy Defendant's continuing failure to adequately warn
5 individuals in California that they are being exposed to cadmium, a chemical known to the State of
6 California to cause birth defects and other reproductive harm. Such exposures have occurred, and
7 continue to occur, through the manufacture, distribution, sale and consumption of Defendant's
8 Sprouts Flavor No. Eleven – Hatch Chile Flavored – Potato Chips; UPC #: 6 46670 31728 6 (the
9 "Product"). The Product is available to consumers in California through a multitude of retail
10 channels including, without limitation (a) third-party traditional brick-and-mortar retail locations; (b)
11 via the internet through Defendant's website; and (c) via the internet through third-party retail
12 websites. Consumers are exposed to cadmium when they consume the Product.

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

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

23 **PARTIES**

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

26 5. Defendant SPROUTS FARMERS MARKET, INC. ("SPROUTS") is a person in
27 the course of doing business within the meaning of Health & Safety Code § 25249.11. SPROUTS
28

1 manufactures, distributes and/or sells the Product for sale and use in California.

2 6. The true names of DOES 1 through 100 are unknown to Plaintiff at this time. When
3 their identities are ascertained, the Complaint shall be amended to reflect their true names.

4 **JURISDICTION AND VENUE**

5 7. The Court has jurisdiction over this action pursuant to Health & Safety Code §
6 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
7 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
8 other trial courts.

9 8. This Court has jurisdiction over Defendant as a business entity that does sufficient
10 business, has sufficient minimum contacts in California or otherwise intentionally avails itself of the
11 California market through the sale, marketing or use of the Product in California and/or by having
12 such other contacts with California so as to render the exercise of jurisdiction over it by the
13 California courts consistent with traditional notions of fair play and substantial justice.

14 9. Venue is proper in Los Angeles County Superior Court because one or more of the
15 violations arise in the County of Los Angeles.

16 **BACKGROUND FACTS**

17 10. The People of the State of California have declared by initiative under Proposition
18 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
19 other reproductive harm.” Proposition 65 § 1(b).

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

25
26 No person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without
28 first giving clear and reasonable warning to such individual...

1 12. The State of California has officially listed cadmium as a chemical known to cause
2 cancer, developmental toxicity and reproductive harm.

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

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

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

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

19 17. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff provided a
20 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District
21 Attorneys of every county in California, the City Attorneys of every California city with a population
22 greater than 750,000 and to the named Defendant. In compliance with Health & Safety Code §
23 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the
24 name and address of each violator; (2) the statute violated; (3) the time period during which
25 violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure
26 to cadmium from the Product, and (b) the specific type of Product sold and used in violation of
27 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of
28

1 the violations described in each Notice.

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

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

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

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

23 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
24 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
25 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).

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

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