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County of Santa Clara  
23CV409997  
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7 AUDREY KALLANDER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 CITY AND COUNTY OF SANTA CLARA  
11 UNLIMITED CIVIL JURISDICTION

13 AUDREY KALLANDER,  
14 Plaintiff,  
15 v.  
16 KAYTEE PRODUCTS INCORPORATED;  
17 CENTRAL GARDEN & PET COMPANY;  
18 and DOES 1-150, inclusive,  
19 Defendants.

23CV409997  
Case No.  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by Plaintiff AUDREY  
3 KALLANDER in the public interest of the citizens of the State of California to enforce the People’s  
4 right to be informed of the health hazards caused by exposures to lead, a toxic chemical found on  
5 chew proof water bottles with exterior decorations sold by defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendants’ continuing failure to warn  
7 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 et seq.,  
8 who purchase, use or handle defendants’ products, about the risks of exposure to lead present on the  
9 decorations affixed to the surface of chew proof water bottles with exterior decorations that  
10 defendants manufacture, distribute and offer for sale or use throughout the State of California.  
11 Individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 et seq.,  
12 who purchase, use or handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found on the surface of chew proof water bottles with  
14 exterior decorations that defendants manufacture, distribute, and offer for sale to consumers  
15 throughout the State of California.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
17 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing  
18 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
19 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual... .” Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on February 27, 1987, California listed lead as a chemical  
22 known to cause birth defects and other reproductive harm. Lead became subject to the “clear and  
23 reasonable warning” requirements of the act one year later, on February 27, 1988. Cal. Code Regs.  
24 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health  
26 hazard warnings in California, chew proof water bottles with exterior decorations containing lead  
27 including, but not limited to the, “*Kaytee Products Chew Proof Water Bottle*”, UPC; 0 45125 61982  
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1 9. All such chew proof water bottles with exterior decorations are referred to collectively hereinafter  
2 as “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health hazards  
4 associated with exposures to lead in conjunction with defendants’ sales of the PRODUCTS are  
5 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such  
6 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

7 8. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
8 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the  
9 required warning regarding the health hazards associated with exposures to lead. Health & Safety  
10 Code § 25249.7(a).

11 9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties  
12 against defendants for their violations of Proposition 65.

13 **PARTIES**

14 10. Plaintiff AUDREY KALLANDER is a citizen of the State of California who is  
15 dedicated to protecting the health of California citizens through the elimination or reduction of toxic  
16 exposures from consumer products; and she brings this action in the public interest pursuant to  
17 Health and Safety Code § 25249.7(d).

18 11. Defendant KAYTEE PRODUCTS INCORPORATED (“KAYTEE PRODUCTS”) is a  
19 person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6  
20 and 25249.11.

21 12. KAYTEE PRODUCTS manufactures, imports, distributes, sells, and/or offers the  
22 PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,  
23 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendant CENTRAL GARDEN & PET COMPANY (“CENTRAL GARDEN”) is a  
25 person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6  
26 and 25249.11.

1           14.    CENTRAL GARDEN manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,  
3 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           15.    Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person in  
5 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
6 25249.11.

7           16.    MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
8 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,  
9 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in  
10 California.

11          17.    Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
12 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
13 25249.11.

14          18.    DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,  
15 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale  
16 or use in the State of California, or each implies by its conduct that it distributes, exchanges,  
17 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or  
18 retailers for sale or use in the State of California.

19          19.    Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the  
20 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

21          20.    RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
22 individuals in the State of California.

23          21.    At this time, the true names of defendants DOES 1 through 150, inclusive, are  
24 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code  
25 of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of  
26 the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When  
27 ascertained, their true names shall be reflected in an amended complaint.

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1 22. KAYTEE PRODUCTS, CENTRAL GARDEN, MANUFACTURER DEFENDANTS,  
2 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where  
3 appropriate, be referred to collectively as the “DEFENDANTS.”

4 **VENUE AND JURISDICTION**

5 23. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code  
6 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
7 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
8 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
9 conducted, and continue to conduct, business in Santa Clara county with respect to the PRODUCTS.

10 24. The California Superior Court has jurisdiction over this action pursuant to California  
11 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all  
12 causes except those given by statute to other trial courts.” The statute under which this action is  
13 brought does not specify any other basis of subject matter jurisdiction.

14 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
15 Plaintiff’s information and good faith belief that each of the DEFENDANTS are a person, firm,  
16 corporation or association that is a citizen of the State of California, has sufficient minimum contacts  
17 in the State of California, and/or otherwise purposefully avails itself of the California market.  
18 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
19 courts consistent with traditional notions of fair play and substantial justice.

20 **FIRST CAUSE OF ACTION**

21 **(Violation of Proposition 65 - Against All Defendants)**

22 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
23 1 through 25, inclusive.

24 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
25 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed  
26 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

27 28. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and  
28 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive

1 toxicity without first giving clear and reasonable warning to such individual....” Health & Safety  
2 Code § 25249.6.

3 29. On May 16, 2022, Plaintiff served a sixty-day notice of violation, together with the  
4 accompanying certificate of merit, on KAYTEE PRODUCTS, CENTRAL GARDEN, the California  
5 Attorney General, and all other requisite public enforcers alleging that, as a result of  
6 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being exposed  
7 to lead resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers  
8 first receiving a “clear and reasonable warning” regarding the harms associated with exposures to  
9 lead as required by Proposition 65.

10 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
11 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have  
12 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’  
13 violations are ongoing and continuous and, unless enjoined, will continue in the future.

14 31. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement agency  
15 has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
16 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of violation.

17 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer  
18 for sale or use in California cause exposures to lead as a result of the reasonably foreseeable use of  
19 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in  
20 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

21 33. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,  
22 distribute, sell, and offer for sale in California contain lead.

23 34. Lead is present on the PRODUCTS in such a way as to expose consumers through  
24 dermal contact and/or ingestion during reasonably foreseeable use.

25 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
26 continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of  
27 Regulations, section 25602(b).

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1           36. DEFENDANTS know that the normal and reasonably foreseeable use of the  
2 PRODUCTS expose individuals to lead through dermal contact and/or ingestion.

3           37. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use of  
4 the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,  
5 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in  
6 California.

7           38. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers  
8 in California who have been, or will be, exposed to lead through dermal contact and/or ingestion  
9 resulting from their use of the PRODUCTS.

10          39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
11 directly by California voters, consumers exposed to lead through dermal contact and/or ingestion as  
12 a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear and reasonable”  
13 health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have  
14 no plain, speedy, or adequate remedy at law.

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

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

20                                   **PRAYER FOR RELIEF**

21           Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

22           1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties  
23 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

24           2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
25 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS  
26 for sale or use in California without a “clear and reasonable warning” in accordance with title 27 of  
27 the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with  
28 exposures to lead;

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3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 et seq.;

4. That the Court 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: January 13, 2023

Respectfully submitted,  
VOORHEES & BAILEY, LLP

By:   
\_\_\_\_\_  
David Joshua Voorhees  
Attorneys for Plaintiff  
AUDREY KALLANDER