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Superior Court of California,
County of San Francisco

05/26/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

6 Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

12 KEEP AMERICA SAFE AND BEAUTIFUL,

13 Plaintiff,

14 v.

15 FAR WEST FUNGI, INC.; and DOES 1-30,
16 inclusive,

17 Defendants.

Case No.

CGC-23-606748

**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 FAR WEST FUNGI, INC. and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

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

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

14 3. Detectable levels of Cadmium and Lead are found in and on the dried mushrooms that
15 Defendants 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 offer
22 for sale, in and into California, dried mushrooms (“**PRODUCTS**”) containing Cadmium and Lead,
23 without Proposition 65’s requisite health hazard warning regarding the harms associated with
24 exposures to the chemicals, including, but not limited to, the *Far West Fungi Tree Oyster Jerky*;
25 *852944001854; Lot # J116*. Defendants’ conduct subjects them to civil penalties for each violation,
26 enjoinder as well as preliminary and permanent injunctive relief. Health & Safety Code
27 § 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 FAR WEST FUNGI, INC. (“**FAR WEST FUNGI**”) was and is a “person” “in the course of doing
11 business” with ten (10) or more employees, within the meanings of Health and Safety Code
12 §§ 25249.6 and 25249.11.

13 8. FAR WEST FUNGI manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in or into the State of California, or implies by its conduct that it
15 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in or into the
16 State of California.

17 9. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
18 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
19 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
20 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
21 offered for sale or use in or into California.

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

27 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
28 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

1 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
2 for sale to individuals in or into the State of California.

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

9 13. At all times mentioned herein, FAR WEST FUNGI, MANUFACTURER
10 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
11 hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

12 JURISDICTION AND VENUE

13 14. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
14 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
15 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
16 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
17 other trial courts.” The statute under which this action is brought does not specify any other basis of
18 subject matter jurisdiction.

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

27 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to
28 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent

1 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
2 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
3 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
4 respect to the PRODUCTS that are the subject of this action.

5 **REGULATORY BACKGROUND AND LAW**

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

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

15 19. Under the Act, a “person in the course of doing business” is defined as a business with
16 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
17 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.
18 Health & Safety Code § 25249.6.

19 20. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
20 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
21 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s
22 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
23 27 C.C.R. § 25600(h).

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

27 22. On February 27, 1987, pursuant to Proposition 65’s implementing regulations,
28 California identified and listed Lead as a chemical known to the State to cause birth defects and other

1 the requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales of the
2 PRODUCTS, consumers in the State of California were, and are, being exposed to Cadmium and
3 Lead through their reasonably foreseeable use of the PRODUCTS as intended without first receiving
4 a "clear and reasonable warning," as required by Proposition 65.

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

8 **FIRST CAUSE OF ACTION**

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

10 29. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
11 set forth in Paragraphs 1 through 28, inclusive.

12 30. DEFENDANTS' PRODUCTS contain Cadmium and Lead in levels requiring a clear
13 and reasonable warning under Proposition 65.

14 31. DEFENDANTS know or should have known the PRODUCTS they manufacture,
15 import, distribute, sell, and offer for sale in California contain Cadmium and Lead. As a result of
16 plaintiff's Notice, DEFENDANTS also have actual knowledge of the presence of Cadmium and Lead
17 in the PRODUCTS.

18 32. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
19 sale in or into the State of California cause exposures to Cadmium and Lead, both direct and/or
20 indirect dermal contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

21 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
22 continues to cause, exposures to Cadmium and Lead.

23 34. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
24 exposes individuals to Cadmium and Lead through direct and indirect dermal contact and/or
25 ingestion.

26 35. DEFENDANTS intend that exposures to Cadmium and Lead from the reasonably
27 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
28 California marketplace.

1 reasonable warning” to consumers addressing the harms associated with exposures to Cadmium and
2 Lead;

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

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

8 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
9 herein; and

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

11 Dated: May 26, 2023

Respectfully submitted,

SEVEN HILLS LLP

12
13
14 By: _____


Kimberly Gates Johnson

Attorneys for Plaintiff

Keep America Safe and Beautiful