

1 Caspar Jivalagian, Esq., State Bar No.: 282818  
2 Vache Thomassian, Esq., State Bar No.: 289053  
3 Tro Krikorian, Esq., State Bar No.: 317183  
4 **KJT LAW GROUP, LLP**  
5 230 N. Maryland Avenue, Suite 306  
6 Glendale, California 91206  
7 Telephone: 818-507-8525  
8 Facsimile: 818-507-8588

9 Attorneys for Plaintiff,  
10 **TAMAR KALOUSTIAN**

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By E. Galicia, Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES**

13 **TAMAR KALOUSTIAN**, in the public interest,  
14 Plaintiff,

15 v.

16 **CVS Pharmacy, Inc.; and DOES 1 through 100,**  
17 inclusive,  
18 Defendants.

Civil Action No.: **24STCV02912**

**COMPLAINT FOR INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

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

**KJT** LAWGROUP LLP  
Jivalagian | Thomassian

1 Tamar Kaloustian, in the public interest, based on information and belief and investigation  
2 of 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 lead and cadmium, chemicals known to the  
6 State of California to cause birth defects and other reproductive harm. Such exposures have  
7 occurred, and continue to occur, through the manufacture, distribution, sale and consumption of  
8 Defendant's 1) Back to Basics - Original - Dried Shiitake Jerky, UPC #: 8 53496 00854 4 (lead and  
9 cadmium) 2) DJ&A - Shiitake Mushroom Crisps - Lightly Cooked & Seasoned, UPC #: 8 53496  
10 00805 6 (cadmium) (the "Products"). The Products are available to consumers in California through  
11 a multitude of retail channels including, without limitation (a) third-party traditional brick-and-mortar  
12 retail locations; (b) via the internet through Defendant's website; and (c) via the internet through  
13 third-party retail websites. Consumers are exposed to lead and/or cadmium when they consume the  
14 Products.

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

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

25 **PARTIES**

26 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &  
27 Safety Code § 25249.7(d).  
28

1           5. Defendant CVS PHARMACY, INC. ("CVS") is a person in the course of doing  
2 business within the meaning of Health & Safety Code § 25249.11. CVS manufactures, distributes  
3 and/or offers the Products for sale and use in California.

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

#### 6                           JURISDICTION AND VENUE

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

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

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

#### 18                           BACKGROUND FACTS

19           10. The People of the State of California have declared by initiative under Proposition  
20 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
21 other reproductive harm." Proposition 65 § 1(b).

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

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

1           12.     The State of California has officially listed lead and cadmium as chemicals known to  
2     cause 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 products. 27 C.C.R. § 25821(C)(2).

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

13           15.     During the relevant one-year period herein, no clear and reasonable warning was  
14    provided with the Products regarding the reproductive hazards of lead and/or 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 two  
20    sets of 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the  
21    District Attorneys of every county in California, the City Attorneys of every California city with a  
22    population greater than 750,000 and to the named Defendant. In compliance with Health & Safety  
23    Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1)  
24    the 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 lead and/or cadmium from the Products, and (b) the specific type of Products sold and used in  
27    violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is  
28

1 the subject of 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 lead and/or cadmium  
8 alleged in each Notice; and (2) based on the information obtained through such consultations,  
9 believes that there is a reasonable and meritorious case for a citizen enforcement action based on  
10 the facts alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11  
11 C.C.R. § 3102, each Certificate served on the Attorney General included factual information-  
12 provided on a confidential basis-sufficient to establish the basis for the Certificate, including the  
13 identity of the person(s) consulted by the Plaintiff's counsel and the facts, studies or other data  
14 reviewed by such 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 lead and 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  
26 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division  
2, § 12201).

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

1 23. Defendant also has constructive knowledge that the Products contain lead and  
2 cadmium due to the widespread media coverage concerning the problem of lead and cadmium in  
3 consumer products.

4 24. As entities that manufacture, import, distribute and/or sell the Products for use in the  
5 California marketplace, Defendant knows or should know that the Products contain lead and/or  
6 cadmium and that individuals who consume the Products will be exposed to lead and cadmium.  
7 The lead and cadmium exposures to consumers who consume the Products are a natural and  
8 foreseeable consequence of Defendant's placing the Products into the stream of commerce.

9 25. Nevertheless, Defendant continues to expose consumers to lead and cadmium  
10 without prior clear and reasonable warnings regarding the reproductive hazards of lead and  
11 cadmium.

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

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

19 **CAUSE OF ACTION**

20 (Violations of the Health & Safety Code 25249.6)

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

23 29. By placing the Products into the stream of commerce, Defendant is a person in the  
24 course of doing business within the meaning of Health & Safety Code § 25249.11.

25 30. Lead and cadmium are chemicals listed by the State of California as known to cause  
26 birth defects and other reproductive harm.

27 31. Defendant knows that average use of the Products will expose users of the Products  
28

1 to lead and cadmium. Defendant intends that the Products be used in a manner that results in  
2 exposures to lead and cadmium from the Products.

3 32. Defendant has failed, and continues to fail, to provide clear and reasonable warnings  
4 regarding the reproductive toxicity of lead and cadmium to users of the Products.

5 33. By committing the acts alleged above, Defendant has at all times relevant to this  
6 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to lead and  
7 cadmium without first giving clear and reasonable warnings to such individuals regarding the  
8 reproductive toxicity of lead and cadmium.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays for judgment against Defendant as follows:

11 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties  
12 against the Defendant in the amount of \$2,500 per day for each violation of Proposition 65;

13 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
14 permanently enjoin Defendant from offering the Products for sale in California without either  
15 reformulating the Products such that no Proposition 65 warnings are required or providing prior  
16 clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

17 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to  
18 take action to stop ongoing unwarranted exposures to lead and cadmium resulting from use of  
19 Products sold, as Plaintiff shall specify in further application to the Court;

20 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
21 applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and

22 5. That the Court grant such other and further relief as may be just and proper.  
23

24 Dated: February 2, 2024

KJT LAW GROUP, LLP

25  
26  
27 By: 

Tro Krikorian  
Attorneys for Plaintiff  
TAMAR KALOUTIAN