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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**  
10 **UNLIMITED CIVIL JURISDICTION**  
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13 **KEEP AMERICA SAFE AND BEAUTIFUL)** **CASE NO.:** 37-2023-00053701-CU-NP-CTL  
14 **PLAINTIFF,** )  
15 **VS.** ) **COMPLAINT FOR CIVIL PENALTIES**  
16 **EL SUPER PONCHIN SNACKS, INC.,** ) **AND INJUNCTIVE RELIEF**  
17 **INSTACART.COM,** ) *(Cal. Health & Safety Code § 25249.6 et seq.)*  
18 **AND DOES 1-25 INCLUSIVE** )  
19 )  
20 **DEFENDANTS.** )

21  
22 **NATURE OF THE ACTION**

23 1. This Complaint is a representative action brought by Plaintiff “Keep America Safe  
24 And Beautiful,” in the public interest of the citizens of the State of California, to enforce the  
25 people’s right to be informed of the dangers from exposures to Lead (hereafter “Listed  
26 Chemical”), a toxic chemical, when touching and/or eating the “El Super Leon Burrito de  
27 Tamarindo Tamarind Candy”

28 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS’ continuing failures  
to warn California citizens about their exposure to the Listed Chemical as a result of the normal

**COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**

1 and intended use of the “El Super Leon Burrito de Tamarindo Tamarind Candy,” (hereafter  
2 “PRODUCT”), that the DEFENDANTS manufactured, distributed and sold, in the State of  
3 California and PRODUCT that DEFENDANTS continue to manufacture, distribute and offer for  
4 sale in the State of California.

5 3. Consumers are exposed to high levels of the Listed Chemical during the normal  
6 and intended use of the PRODUCT that DEFENDANTS manufacture, distribute and/or offer for  
7 sale to consumers throughout the State of California.

8 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
9 California Health & Safety Code § 25249.6 et seq. (Proposition 65), “No person in the course of  
10 doing business shall knowingly and intentionally expose any individual to a chemical known to  
11 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
12 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

13 5. California identified and listed Lead as a chemical known to cause birth defects,  
14 cancer and other reproductive harm. Lead became subject to the warning requirements of  
15 Proposition 65 beginning on October 1, 1992 (*27 CCR § 27002; Cal. Health & Safety Code §*  
16 *25249.6.*)

17 6. DEFENDANTS’ past and continuing failures to warn consumers and/or other  
18 individuals in the State of California about their exposure to the LISTED CHEMICAL in  
19 conjunction with defendant’s sale of the PRODUCT is a violation of Proposition 65 and subjects  
20 DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such violation.

21 7. For DEFENDANTS’ violations of Proposition 65, Plaintiff seeks preliminary  
22 injunctive and permanent injunctive relief to compel DEFENDANTS to provide purchasers or  
23 users of the PRODUCT with the required warning regarding the health hazards of the LISTED  
24 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

25 8. Plaintiff also seeks civil penalties against DEFENDANTS for their violations of  
26 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

1 **PARTIES**

2 9. Plaintiff Keep America Safe And Beautiful is a citizen of the State of California,  
3 who is dedicated to protecting the health of California citizens through the elimination and  
4 reduction of toxic exposures from consumer PRODUCTS, and brings this action in the public  
5 interest pursuant to California Health & Safety Code § 25249.7.

6 10. Defendant El Super Ponchin Snacks, Inc (collectively with other Defendants  
7 “DEFENDANTS”) is a person doing business within the meaning of California Health & Safety  
8 Code § 25249.11.

9 11. Defendant Instacart.com. (collectively with other Defendants “DEFENDANTS”)  
10 is a person doing business within the meaning of California Health & Safety Code § 25249.11.

11 12. DEFENDANTS manufacture, distribute, and/or offer the PRODUCT for sale or  
12 use in the State of California or implies by its conduct that it manufactures, distributes and/or  
13 offers the PRODUCT for sale or use in the State of California.

14 **VENUE AND JURISDICTION**

15 13. Venue is proper in the San Diego County Superior Court, pursuant to Code of  
16 Civil Procedure § 394, 495, 395.5, because this Court is a court of competent jurisdiction,  
17 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
18 County of San Diego and/or because DEFENDANTS conducted, and continue to conduct,  
19 business in this County with respect to the PRODUCT.

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

24 15. The California Superior Court has jurisdiction over DEFENDANTS based on  
25 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
26 association that either are citizens of the State of California, have sufficient minimum contacts in  
27 the State of California, or otherwise purposefully avail themselves of the California market.  
28

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
2 courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against Defendants)**

5 16. Plaintiff realleges and incorporates by reference, as if full reference, as if fully set  
6 forth herein, Paragraphs 1 through 15, inclusive.

7 17. The citizens of the State of California have expressly stated in the Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.  
9 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
10 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

11 18. Proposition 65 states, “No person in the course of doing business shall knowingly  
12 and intentionally expose any individual to a chemical known to the state to cause cancer or  
13 productive toxicity without first giving clear and reasonable warning to such individual...  
14 (*Id.*)”

15 19. On December 29, 2022 a sixty-day notice violation, together with the requisite  
16 certificate of merit, was provided to DEFENDANTS and various public enforcement agencies  
17 stating that as a result of the DEFENDANTS' sales of the PRODUCT, purchasers and users in  
18 the State of California were being exposed to the LISTED CHEMICAL resulting from the  
19 reasonably foreseeable use of the PRODUCT, without the individual purchasers and users first  
20 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

21 20. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
22 the PRODUCT for sale or use in violation of California Health & Safety Code § 25249.6 and  
23 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCT for sale or use in  
24 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
25 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
26 believes that such violations will continue to occur into the future.

1           21. After receipt of the claims asserted in the sixty-day notices of violation, the  
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
3 cause of action against DEFENDANTS under Proposition 65.

4           22. The PRODUCT manufactured, distributed, and/or offered for sale or use in  
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
6 limits.

7           23. DEFENDANTS knew or should have known that the PRODUCT manufactured,  
8 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED  
9 CHEMICAL.

10           24. The PRODUCT, through normal handling, eating and use exposes individuals to  
11 the LISTED CHEMICAL through inhalation, dermal contact and/or ingestion during the  
12 reasonably foreseeable use of the PRODUCT.

13           25. The normal and reasonably foreseeable use of the PRODUCT has caused and  
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
15 by 27 CCR§ 25602(b).

16           26. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCT would expose individuals to the LISTED CHEMICAL.

18           27. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
19 the reasonably foreseeable use of the PRODUCT would occur by their deliberate, non-accidental  
20 participation in the manufacture, distribution and/or offer for sale or use of PRODUCT to  
21 individuals in the State of California.

22           28. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
23 consumers and/or other individuals in the State of California who were or who could become  
24 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCT.

25           29. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
26 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the  
27 reasonably foreseeable use of the PRODUCT, sold by DEFENDENTS without a “clear and  
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1 reasonable warning," have suffered, and continue to suffer, irreparable harm, for which harm  
2 they have no plain, speedy or adequate remedy at law.

3 30. As a consequence of the above-described acts, DEFENDANTS are liable for a  
4 maximum civil penal of \$2,500 per day for each violation pursuant to California Health & Safety  
5 Code § 25249.7(b).

6 31. As a consequence of the above-described acts, California Health & Safety Code §  
7 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 32. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
10 hereinafter.

11 **PRAYER FOR RELIEF**

12 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

13 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
14 civil penalties against DEFENDANTS, in the amount of \$2,500 per day for each  
15 violation alleged herein.

16 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
17 preliminarily and permanently enjoin DEFENDANTS from manufacturing,  
18 distributing or offering the PRODUCT for sale or use in California, without providing  
19 "clear and reasonable warnings" as detailed by 27 CCR § 25601, as to the harms  
20 associated with exposures to the LISTED CHEMICAL;


21 3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and,

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

23 Respectfully Submitted,

24 Law Offices of Stephanie Sy.

25 *Electronic Signature*

26 By:  \_\_\_\_\_

27 Stephanie Sy, Esq.

28 Attorney for Plaintiff

Keep America Safe And Beautiful