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2	4079 Governor Dr., No. 1018 San Diego, California 92122	Superior Court of California, County of San Diego	
3	P: (619) 350-3334	05/04/2023 at 04:03:38 PM Clerk of the Superior Court	
4	jcharo@charolaw.com	By Kristin Sorianosos, Deputy Clerk	
5	Attorneys for Plaintiff RAMY KAUFLER EDEN		
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10	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
11	COUNTY OF SAN DIEGO		
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13	RAMY KAUFLER EDEN	Case No.: 37-2023-00019127-CU-MC-CTL	
14	Plaintiff,	COMPLAINT FOR INJUNCTIVE RELIEF	
15	V.	AND CIVIL PENALTIES	
16	WHOLE MART INTERNATIONAL, LLC and DOES 1 through 50, inclusive,	(Violation of Health & Safety Code section 25249.5, et seq.)	
17	Defendants.		
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	Complaint for Civil Penalties and Injunctive Relief		

Plaintiff Ramy Kaufler Eden ("Plaintiff"), by and through his attorneys, alleges the following based on information and belief and investigation of counsel:

INTRODUCTION

- 1. Defendant Whole Mart International, LLC ("Defendant") produces and sells a line of spices and supplements to the public under the "Balboa International Market" brand. This line of products includes Balboa International Market brand garam masala ("Garam Masala") and sour grape powder ("Grape Powder"). These two products are collectively referred to herein as the "Products."
- 2. Unfortunately, the Products contain the chemical Lead, which is known to the State of California to cause cancer and birth defects and other reproductive harm. By selling these Products to California consumers, Defendant exposes individuals—including children and pregnant women who are particularly susceptible to Lead's toxic effects—to Lead without warning of such exposure. This Complaint ("Complaint") seeks to remedy Defendant's failure to warn of these toxic exposures and hold Defendant accountable for violating California's Proposition 65.
- 3. California's Proposition 65, codified in California Health & Safety Code section 25249.5, *et seq.*, makes it unlawful for businesses to knowingly and intentionally expose individuals in California to chemicals known to the State to cause cancer, birth defects or other reproductive harm without first providing clear and reasonable warnings to the exposed individuals.
- 4. Defendant, either directly or through their downstream customers, introduces the Products—which contain significant quantities of Lead—into the California marketplace, thereby exposing the Products' consumers to Lead. Defendant does so without providing any warnings whatsoever about the carcinogenic or reproductive hazards associated with Lead exposure resulting from consumption of its Products. Defendant's conduct thus violates the warning provision of Proposition 65. *See* Health & Saf. Code § 25249.6.

PARTIES

5. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such products. He brings this action in the public interest pursuant to Health & Safety Code section 25249.7(d).

6. Defendant is a California limited liability company and is a "person in the course of doing business" within the meaning of Health & Safety Code section 25249.11. Defendant manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

- 7. DOES 1 through 50 are each a "person in the course of doing business" within the meaning of Health & Safety Code section 25249.11. Each of DOES 1 through 50 manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
- 8. The true names of DOES 1 through 50 are either unknown to Plaintiff at this time or the applicable time period before which Plaintiff may file a Proposition 65 action has not yet run. When their identities are ascertained or the applicable time period before which Plaintiff may file a Proposition 65 action against them has run, the Complaint shall be amended to reflect their true names. Defendant and DOES 1 through 50 are collectively referred to herein as "Defendant."

JURISDICTION AND VENUE

- 9. The Court has jurisdiction over this action pursuant to Health & Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to California Constitution Article VI, Section 10, because this case is a cause not given by statute to other trial courts.
- 10. This Court has jurisdiction over Defendant because it is either a citizen of the State of California, has sufficient minimum contacts with the State of California, and/or intentionally avails itself of the California market through the sale, marketing, or consumption of the Products in California or by having such other contacts with California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.
- 11. Venue is proper in San Diego County Superior Court because one or more of the violations arise in the County of San Diego.

STATUTORY BACKGROUND

- 12. The People of the State of California have declared by initiative under Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Proposition 65, § 1(b).
- 13. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by the State of California as known to cause cancer, birth defects or other reproductive harm above certain levels without a "clear and reasonable warning" unless the business responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety Code section 25249.6 states, in pertinent part: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual" Health & Saf. Code § 25249.6
- 14. An exposure to a chemical in a consumer product is one "which results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." Cal. Code Regs. tit. 27, § 25602(b).
- 15. Health and Safety Code section 25603(c) states that "a person in the course of doing business ... shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning." Such warning may be provided, *inter alia*, by a warning on the product's label. *See* Health & Saf. Code § 25603.1. These warnings must be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices in the label to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use.
- 16. Proposition 65 provides that any "person who violates or threatens to violate" the statute may be enjoined in a court of competent jurisdiction. Health & Saf. Code § 25249.7. Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act. *See id.* Any person acting in the public interest has standing to enforce violations of Proposition 65 provided that such person has supplied the requisite public enforcers with a valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action within such time. *See* Health & Saf. Code § 25249.7(d).

- 17. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant under three subcategories: "developmental reproductive toxicity," which means harm to the developing fetus, "female reproductive toxicity," which means harm to the female reproductive system, and "male reproductive toxicity," which means harm to the male reproductive system. Cal. Code Regs. tit. 27, § 27001(c).
- 18. On February 27, 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead became subject to the clear and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *See id.*; Health & Saf. Code § 25249.10(b).

FACTUAL BACKGROUND

- 19. As noted above, Defendant produces and sells a line of spices and supplements under the "Balboa International Market" brand. These include the Products at issue in this case: Defendant's Garam Masala and Grape Powder.
- 20. Garam masala is a spice blend traditionally used in Indian, Pakistani, and other cuisine. Grape powder is used as a health supplement touted for its antioxidant properties and its ability to lower blood pressure. It is also traditionally used as a spice in Iranian and other cuisine.
- 21. Unfortunately, at all relevant times—including the period from at least one year preceding the filing of this Complaint and continuing through the filing of this Complaint—each of the Products contained sufficient quantities of Lead such that consumers, including pregnant women and children, who consume them were exposed to a significant amount of Lead. The primary route of exposure to Lead in the Products is through direct ingestion when people consume the Products in food or as a health supplement. These exposures occur throughout California wherever Defendant's Products are consumed.
- 22. At all relevant times—including the period from at least one year preceding the filing of this Complaint and continuing through the filing of this Complaint—Defendant manufactured, imported, distributed, sold, and/or offered for sale the Products in the State of California without providing the requisite Lead exposure warning information.
 - 23. At all such times, Defendant failed to provide any clear and reasonable warning

regarding the carcinogenic or reproductive hazards of Lead in the Products.

- 24. At all such times, Defendant knowingly and intentionally exposed consumers of its Products to Lead without first giving a clear and reasonable warning to such consumers.
- 25. At all such times, Defendant was a "person in the course of doing business" within the meaning of Health & Safety Code section 25249.11. During such times, as a proximate result of acts by Defendant, individuals throughout the State of California, including in San Diego County, have been exposed to Lead via Defendant's Products without first being provided a clear and reasonable warning concerning such exposures. The individuals subject to the violative exposures include normal and foreseeable consumers and users of the Products.

SATISFACTION OF NOTICE REQUIREMENTS

- 26. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff served a 60-Day Notice of Violation of Proposition 65 ("Notice") upon the named Defendant and on the California Attorney General, the District Attorneys of every county in California, and the City Attorneys of every California city with a population greater than 750,000 persons.
- 27. The Notice complied with all procedural requirements of Proposition 65, including the attachment of a Certificate of Merit.
- 28. After receiving the Notice, and to the best of Plaintiff's information and belief, as of the filing of this Complaint, none of the noticed public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged violations set forth in the Notice.
- 29. Plaintiff is commencing this action more than sixty days from the date of the Notice to Defendant.

FIRST CAUSE OF ACTION

(Against Defendant for Violations of Health & Safety Code Section 25249.6 re Garam Masala)

- 30. Plaintiff hereby repeats and incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.
- 31. Defendant has, at all times mentioned herein, acted as a manufacturer, importer, distributer, and/or seller of the Garam Masala and a person in the course of doing business within the

meaning of Health & Safety Code section 25249.11.

- Defendant's Garam Masala contains Lead, a hazardous chemical known to the State of California to be hazardous to human health.
- Defendant knows that consumers of its Garam Masala will be exposed to Lead when
- Defendant's Garam Masala does not comply with Proposition 65's warning
- Plaintiff is informed and believes that at all relevant times herein, and at least as of one year preceding the filing of this Complaint, Defendant knowingly and intentionally exposed California consumers of the Garam Masala to Lead without providing the warnings required by Proposition 65–
- Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause of Action prior to filing this Complaint.
- Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the abovedescribed acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.
- Pursuant to Health and Safety Code section 25249.7(a), this Court is specifically authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

SECOND CAUSE OF ACTION

(Against Defendant for Violations of Health & Safety Code §25249.6 re Grape Powder)

- Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 29 of this Complaint as though fully set forth herein.
- Defendant has, at all times mentioned herein, acted as a manufacturer, importer, distributer, and/or seller of the Grape Powder and a person in the course of doing business within the meaning of Health & Safety Code section 25249.11.
- Defendant's Grape Powder contains Lead, a hazardous chemical known to the State of California to be hazardous to human health.
- Defendant knows that consumers of its Grape Powder will be exposed to Lead when the consumers eat that product.

Complaint for Civil Penalties and Injunctive Relief

1	5. That the Court grant s	uch other and further relief as may be just and proper.
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3	Dated: May 4, 2023	JARRETT CHARO APC
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5		Ву:
6		Jarrett S. Charo, Esq.
7		Attorneys for Plaintiff
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