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Superior Court of California,
County of San Francisco

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Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF SAN FRANCISCO

CGC-24-614380

9 GABRIEL ESPINOZA,

10 Plaintiff,

11 vs.

12 FORTUNE COMMERCIAL
13 CORPORATION,

14 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

15 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following
16 cause of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
20 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
21 “[n]o person in the course of doing business shall knowingly and intentionally expose any
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
23 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People’s right to be informed of the health
26 hazards caused by exposure to lead, a toxic chemical found in (a) *Pamana*® black fungus spices,
27 UPC # 795981950290, and (b) Wah Nam instant lomi seasoning mixes, UPC # 852150001235

1 sold and/or distributed by defendant Fortune Commercial Corporation (“Fortune” or “Defendant”)
2 in California.

3 3. Lead is a harmful chemical known to the State of California to cause cancer and
4 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as
5 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations
6 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
7 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to
8 cause birth defects or other reproductive harm.

9 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
10 within California or sell products therein to comply with Proposition 65 regulations. Included in
11 such regulations is the requirement that businesses must label any product containing a Proposition
12 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
13 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
14 chemical.

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
16 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
17 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
18 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
19 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
20 25249.7.

21 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
22 without a requisite exposure warning, (a) *Pamana*® black fungus spices, UPC # 795981950290,
23 and (b) Wah Nam instant lomi seasoning mixes, UPC # 852150001235 (the “Products”) that
24 expose persons to lead when used for their intended purpose.

25 7. Defendant’s failure to warn consumers and other individuals in California of the
26 health hazards associated with exposure to lead in conjunction with the sale and/or distribution of
27 the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
28 penalties described herein.

1 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
2 State to cause cancer and birth defects or other reproductive harm.

3 22. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, and recommended consumption of the Products. The primary route of exposure to lead
5 is through ingestion. When foods contaminated with lead are consumed, ingestion of lead will
6 occur which will increase blood lead levels. No clear and reasonable warning is provided with the
7 Products regarding the health hazards of exposure.

8 23. Defendant has processed, marketed, distributed, offered to sell and/or sold the
9 Products in California since at least June 7, 2023 with respect to the *Pamana*® black fungus spices
10 and since at least June 22, 2023 with respect to the Wah Nam instant lomi seasoning mixes. The
11 Products continue to be distributed and sold in California without the requisite warning
12 information.

13 24. At all times relevant to this action, Defendant has knowingly and intentionally
14 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable
15 exposure warning to such individuals.

16 25. As a proximate result of acts by Defendant, as a person in the course of doing
17 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
18 California, including in San Francisco County, have been exposed to lead without a clear and
19 reasonable warning on the Products. The individuals subject to the violative exposures include
20 normal and foreseeable users and consumers that consume the Products, as well as all others
21 exposed to the Products.

22 **SATISFACTION OF NOTICE REQUIREMENTS**

23 26. Plaintiff purchased the Products from Fortune. At the time of purchase, Defendant
24 did not provide a Proposition 65 exposure warning for lead or any other Proposition 65 listed
25 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

26 27. The Products were sent to a testing laboratory to determine if, and what amount of,
27 lead a consumer would be exposed to per serving size.

1 28. On May 30, 2023 (*Pamana*® black fungus spices) and May 31, 2023 (Wah Nam
2 instant lomi seasoning mixes), the laboratory provided the results of its analysis. Results of this
3 test determined the Products exposes consumers to lead (collectively, the “Chemical Test Reports”
4 and each a “Chemical Test Report”).

5 29. Plaintiff provided the Chemical Test Reports and Products to an analytical chemist
6 to determine if, based on the findings of the Chemical Test Reports and the reasonable and
7 foreseeable consumption of the Products, exposure to lead will occur at levels that require
8 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
9 the California Code of Regulations.

10 30. On June 7, 2023, Plaintiff received from the analytical chemist an exposure
11 assessment report which concluded that persons in California who consume the *Pamana*® black
12 fungus spices will be exposed to levels of lead that require a Proposition 65 exposure warning. On
13 June 22, 2023, Plaintiff received from the analytical chemist an exposure assessment report which
14 concluded that persons in California who consume the Wah Nam instant lomi seasoning mixes
15 will be exposed to levels of lead that require a Proposition 65 exposure warning.

16 31. On June 7, 2023 (*Pamana*® black fungus spices) and June 22, 2023 (Wah Nam
17 instant lomi seasoning mixes), Plaintiff gave notice of alleged violation of Health and Safety Code
18 § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to lead
19 contained in the Products without proper warning, subject to a private action to Defendants and to
20 the California Attorney General’s office and the offices of the County District attorneys and City
21 Attorneys for each city with a population greater than 750,000 persons wherein the herein
22 violations allegedly occurred.

23 32. The Notice complied with all procedural requirements of Proposition 65 including
24 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
25 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead
26 exposure, and that counsel believed there was meritorious and reasonable cause for a private
27 action.

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