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The Chemical Toxin Working Group Inc. doing
6 business as Healthy Living Foundation Inc.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

9
10 THE CHEMICAL TOXIN WORKING
GROUP INC., a California non-profit
11 corporation, doing business as HEALTHY
LIVING FOUNDATION INC.

12 Plaintiff,

13 vs.

14 THE PICTSWEET CO., a Tennessee-based
company, INSTACART, a Delaware
15 corporation, FOOD 4 LESS HOLDINGS,
INC., a California company, and DOES 1-10

16 Defendants.
17

CASE NO. **24STCV08902**

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES, AND
OTHER RELIEF UNDER HEALTH
AND SAFETY CODE SECTION 25249.5,
et seq.
(PROPOSITION 65)**

18 Plaintiff The Chemical Toxin Working Group Inc. doing business as Healthy Living
19 Foundation Inc. (“Plaintiff” or “HLF”) hereby alleges the following on information and belief:

20 **INTRODUCTION**

- 21 1. This action seeks injunctive and declaratory relief and civil penalties to remedy the
22 continuing failure of defendants THE PICTSWEET CO., INSTACART, FOOD 4
23 LESS HOLDINGS, INC and DOES 1-10 to warn consumers in California that they are

1 being exposed to Cadmium, a chemical known to the State of California to cause
2 reproductive toxicity found in PictSweet Farms Simple Harvest Chopped Spinach,
3 UPC Bar Code 70560 87254 (“Product”).

- 4 2. This action is brought in the public interest and is based on The Safe Drinking Water
5 and Toxic Enforcement Act of 1986 (Health and Safety Code § 25249.6 et seq.) also
6 known as “Proposition 65.” This statute mandates that any person in the course of
7 doing business must provide a clear and reasonable warning prior to exposing any
8 individual to a chemical known to the state to cause cancer, birth defects or other
9 reproductive harm.

10 **PARTIES**

- 11 3. HLF is a non-profit consumer health organization that implements measures to
12 eliminate and reduce the amount of chemical toxins in foods posing targeted dangers
13 to fetuses, children, pregnant women and women of childbearing age; improves safety
14 for workers by reducing their exposure to chemicals; and publishes consumer health
15 periodicals, books, and comparative test results. HLF’s Chief Officer David W.
16 Steinman is a publisher, health journalist and bestselling author of *Diet For A*
17 *Poisoned Planet* (Crown Ed., 1990, Ballantine 2d Ed., 1992, Running Press 3d Ed.,
18 2007); among his other books are *The Safe Shopper’s Bible* (Macmillan Ed., 1995,
19 Wiley 2d Ed., 2000), and *The Breast Cancer Prevention Program* (Macmillan Ed.,
20 1997). Mr. Steinman represented the public interest at the National Academy of
21 Sciences on the Safe Seafood Committee that produced *Seafood Safety* (Washington,
22 D.C.: National Academies Press, 1991); has advised Congress on related legislation;
23 and has testified before Congress as an expert witness on food safety.

- 1 4. HLF is a person within the meaning of Health and Safety Code section 25249.11,
2 subdivision (a). HLF, acting as a private attorney general, brings this action in the
3 public interest as defined under Health and Safety Code section 25249.7, subdivision
4 (d).
- 5 5. THE PICTSWEET CO. (“PICTSWEET”) is a Tennessee-based company,
6 incorporated in the state of Delaware and doing business in the State of California at
7 all relevant times herein.
- 8 6. INSTACART (“INSTACART”) is a Delaware corporation, and doing business in the
9 State of California at all relevant times herein.
- 10 7. FOOD 4 LESS HOLDINGS, INC. (“FOOD 4 LESS”) is a California company, and
11 doing business in the State of California at all relevant times herein.
- 12 8. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
13 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend
14 this complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the violations
17 caused thereby. DOES 1-10 are each a person in the course of doing business within
18 the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
- 19 9. At all times mentioned herein, the term “Defendants” includes PICTSWEET,
20 INSTACART, FOOD 4 LESS and DOES 1-10.
- 21 10. Defendants employ ten or more persons and have employed ten or more persons at all
22 times relevant to this action, and are each a person in the course of doing business
23 within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

1 **JURISDICTION AND VENUE**

2 11. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10,
3 which grants the Superior Court original jurisdiction in all causes except those given
4 by statute to other trial courts. The statute under which this action is brought does not
5 specify any other basis for jurisdiction.

6 12. This Court has jurisdiction over this action pursuant to Health and Safety Code section
7 25249.7, which allows enforcement of violations of Proposition 65 in any Court of
8 competent jurisdiction.

9 13. This Court has jurisdiction over Defendants because Defendants either reside or are
10 located in this State or are foreign corporations authorized to do business in California,
11 are registered with the California Secretary of State, or Defendants have sufficient
12 minimum contacts with California, and otherwise intentionally avails itself of the
13 California market through the marketing, distribution, and/or sale of Products in the
14 State of California, so as to render the exercise of jurisdiction over Defendants by the
15 California courts consistent with traditional notions of fair play and substantial justice.

16 14. Venue is proper in the Los Angeles Superior Court because the cause of action arises
17 out of violations in the County of Los Angeles and/or because Defendants conducted,
18 and continue to conduct, business in the County of Los Angeles with respect to the
19 consumer products that are the subject of this action.

20 15. Plaintiffs seek injunctive and declaratory relief and civil penalties from Defendants'
21 violations of the prohibitions of Proposition 65 (Health and Safety Code § 25249.5 et
22 seq.)

1 **STATUTORY BACKGROUND**

2 16. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
3 passed as “Proposition 65” by close to a two-to-one voting margin. Proposition 65 is
4 referred to as a “right-to-know” law intended to inform consumers of the potential for
5 exposure to toxic chemicals and thereby empower them with the information needed
6 to avoid the exposure.

7 17. Proposition 65 requires that individuals be provided with a “clear and reasonable
8 warning” before being exposed to substances listed by the State of California as
9 causing cancer or reproductive toxicity. The warning requirement of Proposition 65 is
10 contained in Health & Safety Code § 25249.6, which provides,

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

14 18. In this case, the exposures are caused by consumer products. “Consumer product”
15 means any article, or component part thereof, including food, that is produced,
16 distributed, or sold for the personal use, consumption or enjoyment of a consumer. (27
17 California Code of Regulations § 25600.1(d)) “Consumer product exposure” means
18 an exposure that results from a person's acquisition, purchase, storage, consumption, or
19 any reasonably foreseeable use of a consumer product, including consumption of a
20 food. (27 California Code of Regulations § 25600.1(e)).

21 19. Proposition 65 requires the State to publish a list of chemicals known to cause cancer
22 or birth defects or other reproductive harm (Health and Safety Code §25249.8.) This
23 list now comprises over 800 chemicals.

1 20. Proposition 65 establishes a procedure by which the State is to develop a list of
2 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health &
3 Safety, § 25249.8.)

4 21. Cadmium was listed as a chemical known to the State of California to cause
5 reproductive toxicity on May 1, 1997. Cadmium became subject to the warning
6 requirement one year later and was therefore subject to the “clear and reasonable”
7 warning requirements of Proposition 65 beginning on May 1, 1998. (27 California
8 Code of Regulations § 25000, *et seq.*; Health & Safety Code § 25249.5, *et seq.*). Due
9 to the toxicity of Cadmium, the maximum allowable dose level is 4.1 micrograms a
10 day. (27 California Code of Regulations § 25805(b).) As a point of reference, one
11 microgram is equal to one millionth of a gram (1 microgram = 1/1,000,000 gram).

12 22. Proposition 65 provides that any “person who violates or threatens to violate” the
13 statute “may be enjoined in a court of competent jurisdiction.” (Health & Safety Code
14 § 25249.7). Violators are liable for civil penalties of up to \$2,500 per day for each
15 violation of the Act. (Health & Safety Code §25249.7(b)(1).)

16 23. Violations of Proposition 65 may be enforced by any person in the public interest,
17 after providing a 60-day notice of the violations of the Attorney General, appropriate
18 District Attorneys and City Attorneys and the alleged violator. (Health and Safety
19 Code § 25249.7(d)(1).) Remedies include injunctive relief to prevent actual or
20 threatened violations, and penalties up to \$2,500 per day per violation. (Health and
21 Safety Code §25249.7(a) and (b).)

22 24. Proposition 65 may be enforced by any person who provides notice sixty days before
23 filing suit to both the violator and designated law enforcement officials. When the law

1 enforcement officials do not file a timely Complaint, this enables a citizen suit to be
2 filed pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

3 **FACTUAL BACKGROUND**

4 25. Defendants are businesses that develop, manufacture, package, distribute, market,
5 offer for sale and/or sell the Products in the State of California.

6 26. Plaintiff hired a well-respected and accredited testing laboratory to test Defendant's
7 Products for Cadmium. The results of the testing show that the Products contain
8 Cadmium.

9 27. Individuals are exposed to the Cadmium from the reasonable anticipated use of the
10 Products or when they ingest the Products.

11 28. The Products continue to be offered for sale, sold and/or otherwise made available for
12 use and/or handling to persons in California.

13 29. At all times relevant to this action, Defendants, therefore, have knowingly and
14 intentionally exposed the users of the Products to Cadmium without first giving a clear
15 and reasonable warning to such individuals. The Products continue to be distributed
16 and sold in California without providing the requisite warning, and thus the violations
17 are ongoing and continuous and will continue to occur into the future.

18 30. As a proximate result of acts by Defendants, persons in the course of doing business
19 within the meaning of Health & Safety Code § 25249.11(b), individuals throughout
20 the State of California, including in the County of Los Angeles, have been exposed to
21 Cadmium without a clear and reasonable warning.

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SATISFACTION OF 60 DAY NOTICE

31. On June 27, 2023, Plaintiff served Defendants and each appropriate public enforcement agency with a Proposition 65 Notice, a document entitled “Sixty-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“Notice of Violation”) that provided Defendants and the public enforcement agency with notice that Defendants were in violation of Proposition 65 for failing to warn purchasers and consumers of the Products that ingestion of the Products exposes them to Cadmium, a chemical known to the State of California to cause cancer and reproductive toxicity. The Notice of Violation is designated with Attorney General number 2023-01848. The Notice of Violation constitutes adequate notice to Defendants because it provided adequate information to allow Defendants to assess the nature of the alleged violations. A certificate of merit and a certificate of service accompanied the Notice of Violation, and both certificates comply with Proposition 65 and its implementing regulations. A true and correct copy of the Notice of Violation is attached here as Exhibit A and is incorporated herein by reference.

32. More than 60 days have passed since Plaintiff served the Notice of Violation and no public enforcement entity has filed a Complaint in this case.

33. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff served the Notice of Violation on the Defendants and the public prosecutors referenced in the paragraphs above.

34. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor any applicable district attorney or city attorney has commenced an action or is

1 diligently prosecuting an action against either of the Defendants.

2 **FIRST CAUSE OF ACTION**

3 **(Violation of Health & Safety Code § 25249.6, Failure to Provide Clear and Reasonable**
4 **Warning under Proposition 65 – Against PICTSWEET, FOOD 4 LESS**
5 **and INSTACART and DOES 1-10)**

6 35. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 35, inclusive,
7 as if superficially set forth herein.

8 36. By committing the acts alleged above, Defendants have, in the course of doing
9 business, knowingly and intentionally exposed users of the PictSweet Farms Simple
10 Harvest Chopped Spinach, UPC Bar Code 70560 87254 to Cadmium without first
11 giving clear and reasonable warning to such individuals within the meaning of Health
12 & Safety Code § 25249.6 and continue to violate the statute as the PictSweet Farms
13 Simple Harvest Chopped Spinach, UPC Bar Code 70560 87254 continues to make its
14 way to individuals in California through the chain of commerce.

15 37. Said violations render Defendants liable for civil penalties, up to \$2,500 per day for
16 each violation, and subject Defendants to injunction.

17 **PRAYER**

18 Wherefore, Plaintiff accordingly prays for the following relief:

19 38. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b),
20 against Defendants in the amount of \$2,500 per day for each violation of Proposition
21 65;

22 39. An injunctive order, pursuant to Health & Safety Code § 25249.7(a), for such
23 temporary restraining orders, preliminary and permanent injunctive orders as are

1 necessary to prevent Defendants from exposing individuals to Cadmium without
2 providing a clear and reasonable warning for the Products;

3 40. On all Causes of Action, an award to Plaintiff of its reasonable attorneys' fees and
4 costs;

5 41. For such other relief as the Court may deem just and proper.

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7 DATED: April 8, 2024

POULSEN LAW P.C.

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10 Robert L. Lemle, Esq.
11 Attorneys for Plaintiff
12 The Chemical Toxin Working Group Inc. doing
13 business as Healthy Living Foundation Inc.
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