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

11 BERJ PARSEGHIAN, in the public interest,
12 Plaintiff,

13 v.

14
15 CVS Pharmacy, Inc.; and DOES 1 through 100,
16 inclusive,
17 Defendants.

Civil Action No.: 24STCV16621

**COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

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

KJT LAWGROUP LLP
Jivalagian | Thomassian

1 Berj Parseghian, in the public interest, based on information and belief and investigation of
2 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, a chemical known to the State of
6 California to cause birth defects and other reproductive harm. Such exposures have occurred, and
7 continue to occur, through the manufacture, distribution, sale and consumption of Defendant’s
8 Natreve - Vegan Protein Powder - Fudge Brownie; UPC #: 6 28831 11009 7 (the “Product”). The
9 Product is available to consumers in California through a multitude of retail channels including,
10 without limitation (a) third-party traditional brick-and-mortar retail locations; (b) via the internet
11 through Defendant’s website; and (c) via the internet through third-party retail websites. Consumers
12 are exposed to lead when they consume the Product.

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

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

23 **PARTIES**

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

26 5. Defendant CVS PHARMACY, INC. (“CVS”) is a person in the course of doing
27 business within the meaning of Health & Safety Code § 25249.11. CVS manufactures, distributes
28

1 and/or offers the Product for sale and use in California.

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

4 **JURISDICTION AND VENUE**

5 7. The Court has jurisdiction over this action pursuant to Health & Safety Code §
6 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
7 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
8 other trial courts.

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

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

16 **BACKGROUND FACTS**

17 10. The People of the State of California have declared by initiative under Proposition
18 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
19 other reproductive harm.” Proposition 65 § 1(b).

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

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

27 12. The State of California has officially listed lead as chemicals known to cause cancer,
28 developmental toxicity and reproductive harm.

1 13. The level of exposure to a chemical causing reproductive toxicity under Proposition
2 65 is determined by multiplying the level in question times the reasonably anticipated rate of
3 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). for exposures to consumer
4 products, the level of exposure is calculated using the reasonably anticipated rate of intake or
5 exposure for average users of the consumer products. 27 C.C.R. § 25821(C)(2).

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

11 15. During the relevant one-year period herein, no clear and reasonable warning was
12 provided with the Product regarding the reproductive hazards of lead.

13 16. Any person acting in the public interest has standing to enforce violations of
14 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
15 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
16 within such time. Health & Safety Code § 25249.7(d).

17 17. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff provided a
18 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District
19 Attorneys of every county in California, the City Attorneys of every California city with a population
20 greater than 750,000 and to the named Defendant. In compliance with Health & Safety Code §
21 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following information: (1) the name
22 and address of each violator; (2) the statute violated; (3) the time period during which violations
23 occurred; (4) specific descriptions of the violations, including (a) the routes of exposure to lead
24 from the Product, and (b) the specific type of Product sold and used in violation of Proposition 65;
25 and (5) the name of the specific Proposition 65-listed chemical that is the subject of the violations
26 described in the Notice.

27 18. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
28

1 General, the District Attorneys of every county in California, the City Attorneys of every California
2 city with a population greater than 750,000 and to the named Defendant. The Notice of Violation
3 of Proposition 65 was filed on or about July 6, 2023. In compliance with Health & Safety Code §
4 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff's counsel: (1) has
5 consulted with one or more persons with relevant and appropriate experience or expertise who
6 reviewed facts, studies or other data regarding the exposures to lead alleged in each Notice; and (2)
7 based on the information obtained through such consultations, believes that there is a reasonable
8 and meritorious case for a citizen enforcement action based on the facts alleged in each Notice. In
9 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served
10 on the Attorney General included factual information-provided on a confidential basis-sufficient to
11 establish the basis for the Certificate, including the identity of the person(s) consulted by the
12 Plaintiff's counsel and the facts, studies or other data reviewed by such persons.

13 19. None of the public prosecutors with the authority to prosecute violations of
14 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against Defendant
15 under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the Plaintiff's
16 Notice.

17 20. Defendant knows and intends that individuals will consume the Product, thus
18 exposing them to lead.

19 21. Under Proposition 65, an exposure is "knowing" where the party responsible for
20 such exposure has:

21 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
22 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
23 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
24 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division
25 2, § 12201).

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

28 23. Defendant also has constructive knowledge that the Product contains lead due to the
widespread media coverage concerning the problem of lead in consumer products.

