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David W. Slayton,
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By A. Munoz, Deputy Clerk

Attorneys for Plaintiff,
BERJ PARSEGHIAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BERJ PARSEGHIAN, in the public interest,
Plaintiff,

v.

Andean Dream, LLC; Whole Foods Market
California, Inc.; and DOES 1 through 100,
inclusive,

Defendants.

Civil Action No.: **24STCV16927**

**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
4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants’ continuing failure to adequately warn
6 individuals in California that they are being exposed to lead, a chemical known to the State of
7 California to cause cancer and other reproductive harm. Such exposures have occurred, and
8 continue to occur, through the manufacture, distribution, sale and consumption of Defendants’
9 Andean Dream - Quinoa Products - Quinoa Cookies - Chocolate Chip; UPC #: 8 93470 00102 4
10 (the “Product”). The Product is available to consumers in California through a multitude of retail
11 channels including, without limitation (a) third-party traditional brick-and-mortar retail locations; (b)
12 via the internet through Defendants’ website; and (c) via the internet through third-party retail
13 websites. Consumers are exposed to lead when they consume the Product.

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

20 3. Despite the fact that the Defendants expose consumers to lead, Defendants provide
21 no warning, or inadequate warnings about the reproductive hazards associated with lead exposure.
22 Defendants’ conduct thus violates the warning provision of Proposition 65, Health & Safety Code §
23 25249.6.

24
25 **PARTIES**

26 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &
27 Safety Code § 25249.7(d).
28

1 by the State of California as known to cause cancer, birth defects or other reproductive harm above
2 certain levels without a “clear and reasonable warning” unless the business responsible for the
3 exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states
4 in pertinent part:

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

8 13. The State of California has officially listed lead as a chemical known to cause cancer
9 and reproductive harm.

10 14. The level of exposure to a chemical causing reproductive toxicity under Proposition
11 65 is determined by multiplying the level in question times the reasonably anticipated rate of
12 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). for exposures to consumer
13 products, the level of exposure is calculated using the reasonably anticipated rate of intake or
14 exposure for average users of the consumer product. 27 C.C.R. § 25821(C)(2).

15 15. Defendants’ Product contains sufficient quantities of lead such that consumers,
16 including pregnant women, who consume the Product are exposed to lead. The primary route of
17 exposure for the violations is direct ingestion when consumers orally ingest the Product. These
18 exposures occur in homes, workplaces and everywhere in California where the Product is
19 consumed.

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

22 17. Any person acting in the public interest has standing to enforce violations of
23 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
24 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
25 within such time. Health & Safety Code § 25249.7(d).

26 18. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff
27 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, the
28 District Attorneys of every county in California, the City Attorneys of every California city with a

1 population greater than 750,000 and to the named Defendants. In compliance with Health & Safety
2 Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1)
3 the name and address of each violator; (2) the statute violated; (3) the time period during which
4 violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure
5 to lead from the Product, and (b) the specific type of Product sold and used in violation of
6 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of
7 the violations described in each Notice.

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

21 20. None of the public prosecutors with the authority to prosecute violations of
22 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
23 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of
24 Plaintiff's Notices.

25 21. Defendants both know and intend that individuals will consume the Product, thus
26 exposing them to lead.

27 22. Under Proposition 65, an exposure is "knowing" where the party responsible for
28

1 such exposure has:
2

3 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
4 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
5 27 C.C.R.§ 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
6 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division
7 2, § 12201).

8 23. Defendants have been informed of the lead in their Products by the 60-Day Notice
9 of Violation and accompanying Certificate of Merit served on them.

10 24. Defendants also have constructive knowledge that the Products contain lead due to
11 the widespread media coverage concerning the problem of lead in consumer products.

12 25. As entities that manufacture, import, distribute and/or sell the Product for use in the
13 California marketplace, Defendants know or should know that the Product contains lead and that
14 individuals who consume the Product will be exposed to lead. The lead exposures to consumers
15 who consume the Product are a natural and foreseeable consequence of Defendant's placing the
16 Product into the stream of commerce.

17 26. Nevertheless, Defendants continue to expose consumers to lead without prior clear
18 and reasonable warnings regarding the reproductive hazards of lead.

19 27. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior to
20 filing this Complaint.

21 28. Any person "violating or threatening to violate" Proposition 65 may be enjoined in
22 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is
23 defined to mean "to create a condition in which there is a substantial probability that a violation will
24 occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not to
25 exceed \$2,500 per day for each violation of Proposition 65.

26 **CAUSE OF ACTION**

27 (Violations of the Health & Safety Code 25249.6)
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4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and

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

Dated: July 8, 2024

KJT LAW GROUP, LLP

By: _____

Tro Krikorian, Esq.
Attorneys for Plaintiff
BERJ PARSEGHIAN