

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>JARRETT CHARO APC; Jarrett Charo, Esq. (SBN224001)</b> 4079 Governor Dr., No. 1018 San Diego, CA 92122  TELEPHONE NO.: 619-350-3334                      FAX NO. (Optional):  EMAIL ADDRESS (Optional):  ATTORNEY FOR (Name): Ramy Kaufler Eden	<b>FOR COURT USE ONLY</b>  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego  <b>12/04/2023 at 11:58:00 AM</b>  Clerk of the Superior Court By Shiela Retez, Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., SUITE 1000, VISTA, CA 92081	
PLAINTIFF(S) Ramy Kaufler Eden	JUDGE Hon. Richard S. Whitney
DEFENDANT(S) Whole Mart International, LLC and DOES 1 through 50, inclusive	DEPT C-68
<b>AMENDMENT TO COMPLAINT</b>	CASE NUMBER 37-2023-00019127-CU-MC-CTL

Separate forms are required if attempting to file an amendment under Code of Civil Procedure section 473 and 474. Additionally, only one party may be addressed on each form.


☒ **Amendment under Code of Civil Procedure section 474: Fictitious Name** (Court order required once case is at issue)

Plaintiff(s), being ignorant of the true name of a defendant when the complaint in the above-named case was filed, and having designated defendant in the complaint by the fictitious name of DOE 1

\_\_\_\_\_ ,  
 and having discovered the true name of defendant to be Balboa Market Holdings, LLC

\_\_\_\_\_ ,  
 amends the complaint by inserting such true name in place of such fictitious name wherever it appears in the complaint.

Date: December 4, 2023

  
 \_\_\_\_\_  
 Signature

☐ **Amendment under Code of Civil Procedure section 473: Name - Correct or Add** (Court order required)

1. Plaintiff(s) filed the complaint and named ☐ defendant ☐ plaintiff as \_\_\_\_\_

2. Plaintiff(s) discovered the (select one):

a. ☐ name listed in item 1 to be incorrect, and amends the complaint by substituting the correct name of: \_\_\_\_\_ ,  
 wherever the name listed in item 1 appears in the complaint.

b. ☐ name listed in item 1 uses an additional name and amends the complaint by adding the additional name of: \_\_\_\_\_ ,  
 wherever the name listed in item 1 appears in the complaint.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature

**ORDER**

The above amendment to the complaint is allowed.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
 Judge/Commissioner of the Superior Court

JARRETT CHARO APC  
Jarrett Charo, Esq. (SBN 224001)  
4079 Governor Dr., No. 1018  
San Diego, California 92122  
P: (619) 350-3334  
jcharo@charolaw.com

Attorneys for Plaintiff  
RAMY KAUFLEDER EDEN

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/04/2023** at 04:03:38 PM  
Clerk of the Superior Court  
By Kristin Sorianosos, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN DIEGO**

RAMY KAUFLEDER EDEN

Plaintiff,

v.

WHOLE MART INTERNATIONAL, LLC  
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2023-00019127-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES**

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

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

### 3 **INTRODUCTION**

4 1. Defendant Whole Mart International, LLC (“Defendant”) produces and sells a line of  
5 spices and supplements to the public under the “Balboa International Market” brand. This line of  
6 products includes Balboa International Market brand garam masala (“Garam Masala”) and sour grape  
7 powder (“Grape Powder”). These two products are collectively referred to herein as the “Products.”

8 2. Unfortunately, the Products contain the chemical Lead, which is known to the State of  
9 California to cause cancer and birth defects and other reproductive harm. By selling these Products to  
10 California consumers, Defendant exposes individuals—including children and pregnant women who  
11 are particularly susceptible to Lead’s toxic effects—to Lead without warning of such exposure. This  
12 Complaint (“Complaint”) seeks to remedy Defendant’s failure to warn of these toxic exposures and  
13 hold Defendant accountable for violating California’s Proposition 65.

14 3. California’s Proposition 65, codified in California Health & Safety Code section  
15 25249.5, *et seq.*, makes it unlawful for businesses to knowingly and intentionally expose individuals  
16 in California to chemicals known to the State to cause cancer, birth defects or other reproductive harm  
17 without first providing clear and reasonable warnings to the exposed individuals.

18 4. Defendant, either directly or through their downstream customers, introduces the  
19 Products—which contain significant quantities of Lead—into the California marketplace, thereby  
20 exposing the Products’ consumers to Lead. Defendant does so without providing any warnings  
21 whatsoever about the carcinogenic or reproductive hazards associated with Lead exposure resulting  
22 from consumption of its Products. Defendant’s conduct thus violates the warning provision of  
23 Proposition 65. *See* Health & Saf. Code § 25249.6.

### 24 **PARTIES**

25 5. Plaintiff is a citizen of the State of California acting in the interest of the general public  
26 to promote awareness of exposures to toxic chemicals in products sold in California and to improve  
27 human health by reducing hazardous substances contained in such products. He brings this action in  
28 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).

1           17.     On February 27, 1987, the State of California officially listed lead as a chemical known  
2 to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant under three  
3 subcategories: “developmental reproductive toxicity,” which means harm to the developing fetus,  
4 “female reproductive toxicity,” which means harm to the female reproductive system, and “male  
5 reproductive toxicity,” which means harm to the male reproductive system. Cal. Code Regs. tit. 27, §  
6 27001(c).

7           18.     On February 27, 1988, one year after it was listed as a chemical known to cause  
8 reproductive toxicity, lead became subject to the clear and reasonable warning requirement regarding  
9 reproductive toxicants under Proposition 65. *See id.*; Health & Saf. Code § 25249.10(b).

### 10                                   **FACTUAL BACKGROUND**

11           19.     As noted above, Defendant produces and sells a line of spices and supplements under  
12 the “Balboa International Market” brand. These include the Products at issue in this case: Defendant’s  
13 Garam Masala and Grape Powder.

14           20.     Garam masala is a spice blend traditionally used in Indian, Pakistani, and other cuisine.  
15 Grape powder is used as a health supplement touted for its antioxidant properties and its ability to  
16 lower blood pressure. It is also traditionally used as a spice in Iranian and other cuisine.

17           21.     Unfortunately, at all relevant times—including the period from at least one year  
18 preceding the filing of this Complaint and continuing through the filing of this Complaint—each of  
19 the Products contained sufficient quantities of Lead such that consumers, including pregnant women  
20 and children, who consume them were exposed to a significant amount of Lead. The primary route of  
21 exposure to Lead in the Products is through direct ingestion when people consume the Products in  
22 food or as a health supplement. These exposures occur throughout California wherever Defendant’s  
23 Products are consumed.

24           22.     At all relevant times—including the period from at least one year preceding the filing  
25 of this Complaint and continuing through the filing of this Complaint—Defendant manufactured,  
26 imported, distributed, sold, and/or offered for sale the Products in the State of California without  
27 providing the requisite Lead exposure warning information.

28           23.     At all such times, Defendant failed to provide any clear and reasonable warning

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

2 24. At all such times, Defendant knowingly and intentionally exposed consumers of its  
3 Products to Lead without first giving a clear and reasonable warning to such consumers.

4 25. At all such times, Defendant was a “person in the course of doing business” within the  
5 meaning of Health & Safety Code section 25249.11. During such times, as a proximate result of acts  
6 by Defendant, individuals throughout the State of California, including in San Diego County, have  
7 been exposed to Lead via Defendant’s Products without first being provided a clear and reasonable  
8 warning concerning such exposures. The individuals subject to the violative exposures include normal  
9 and foreseeable consumers and users of the Products.

#### 10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 26. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff served a 60-  
12 Day Notice of Violation of Proposition 65 (“Notice”) upon the named Defendant and on the California  
13 Attorney General, the District Attorneys of every county in California, and the City Attorneys of every  
14 California city with a population greater than 750,000 persons.

15 27. The Notice complied with all procedural requirements of Proposition 65, including the  
16 attachment of a Certificate of Merit.

17 28. After receiving the Notice, and to the best of Plaintiff’s information and belief, as of  
18 the filing of this Complaint, none of the noticed public enforcement agencies have commenced and  
19 diligently prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged  
20 violations set forth in the Notice.

21 29. Plaintiff is commencing this action more than sixty days from the date of the Notice to  
22 Defendant.

#### 23 **FIRST CAUSE OF ACTION**

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

25 30. Plaintiff hereby repeats and incorporates by reference the preceding paragraphs of this  
26 Complaint as though fully set forth herein.

27 31. Defendant has, at all times mentioned herein, acted as a manufacturer, importer,  
28 distributor, and/or seller of the Garam Masala and a person in the course of doing business within the

1 meaning of Health & Safety Code section 25249.11.

2 32. Defendant's Garam Masala contains Lead, a hazardous chemical known to the State of  
3 California to be hazardous to human health.

4 33. Defendant knows that consumers of its Garam Masala will be exposed to Lead when  
5 the consumers eat that product.

6 34. Defendant's Garam Masala does not comply with Proposition 65's warning  
7 requirements.

8 35. Plaintiff is informed and believes that at all relevant times herein, and at least as of one  
9 year preceding the filing of this Complaint, Defendant knowingly and intentionally exposed California  
10 consumers of the Garam Masala to Lead without providing the warnings required by Proposition 65—  
11 and Defendant continues to do so.

12 36. Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause  
13 of Action prior to filing this Complaint.

14 37. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-  
15 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

16 38. Pursuant to Health and Safety Code section 25249.7(a), this Court is specifically  
17 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

18 **SECOND CAUSE OF ACTION**

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

20 39. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 29 of this  
21 Complaint as though fully set forth herein.

22 40. Defendant has, at all times mentioned herein, acted as a manufacturer, importer,  
23 distributor, and/or seller of the Grape Powder and a person in the course of doing business within the  
24 meaning of Health & Safety Code section 25249.11.

25 41. Defendant's Grape Powder contains Lead, a hazardous chemical known to the State of  
26 California to be hazardous to human health.

27 42. Defendant knows that consumers of its Grape Powder will be exposed to Lead when  
28 the consumers eat that product.



43. Defendant's Grape Powder does not comply with Proposition 65's warning requirements.

44. 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 Grape Powder to Lead without providing the warnings required by Proposition 65—and Defendant continues to do so.

45. Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause of Action prior to filing this Complaint.

46. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

47. 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.

### **PRAYER FOR RELIEF**

Plaintiff prays for judgment against Defendant as follows:

1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin Defendant from offering the Products for sale in California without either reformulating the Products such that no Proposition 65 warnings are required or providing prior clear and reasonable warnings as to Lead exposure;

2. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties against Defendant in the amount of \$2,500 per day for each violation of Proposition 65 for each of the two Products according to proof;

3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of the Products;

4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other applicable theory, grant Plaintiff his reasonable attorneys' fees and costs of suit; and

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

Dated: May 4, 2023

JARRETT CHARO APC

By:   
Jarrett S. Charo, Esq.  
Attorneys for Plaintiff