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David W. Slayton,
Executive Officer/Clerk of Court,
By C. Cervantes, Deputy Clerk

5 Attorneys for Plaintiff,
6 KEEP AMERICA SAFE AND BEAUTIFUL

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

24STCV33017

11 KEEP AMERICA SAFE AND BEAUTIFUL, in
12 the public interest,

Civil Action No.:

13 Plaintiff,

14 v.

**COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

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

15 Food Castle, Inc.; and DOES 1 through 100,
16 inclusive,

17 Defendants.

KJT LAWGROUP LLP
jivalagian | Thomassian

1 Keep America Safe and Beautiful, in the public interest, based on information and belief
2 and investigation of counsel, except for information based on knowledge, hereby makes the
3 following allegations.
4

5 **INTRODUCTION**

6 1. This Complaint seeks to remedy Defendant’s continuing failure to adequately warn
7 individuals in California that they are being exposed to Lead, a chemical known to the State of
8 California to cause cancer and other reproductive harm. Such exposures have occurred, and
9 continue to occur, through the manufacture, distribution, sale and consumption of Defendant’s
10 Nutty & Fruity - Chili Tamarind Bites - Made with Real Fruit - UPC #: 8 19496 02400 7 (the
11 “Product”). The Product is available to consumers in California through a multitude of retail
12 channels including, without limitation (a) third-party traditional brick-and-mortar retail locations; (b)
13 via the internet through Defendant’s website; and (c) via the internet through third-party retail
14 websites. Consumers are exposed to lead when they consume the Product.
15

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

22 3. Despite the fact that the Defendant exposes consumers to Lead, Defendant provides
23 no warning, or inadequate warnings about the reproductive hazards associated with Lead exposure.
24 Defendant’s conduct thus violates the warning provision of Proposition 65, Health & Safety Code §
25 25249.6.

26 **PARTIES**

27 4. Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL (“KASB”) is a non-profit
28

BACKGROUND FACTS

10. 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).

11. 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 § 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...

12. The State of California has officially listed Lead as a chemical known to cause cancer and reproductive harm.

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

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

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

16. 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

1 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
2 within such time. Health & Safety Code § 25249.7(d).

3 17. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff provided a
4 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, the District
5 Attorneys of every county in California, the City Attorneys of every California city with a population
6 greater than 750,000 and to the named Defendant. The Notice of Violation of Proposition 65 was
7 filed on or about August 18, 2023. The parties had agreed in writing that all applicable limitations
8 periods and/or statutes of limitations continuing to run or expire as to Plaintiff’s claims will be
9 tolled, and the statutory period of limitation will cease running from and as of August 18, 2024 until
10 December 16, 2024. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. §
11 25903(b), the Notice included the following information: (1) the name and address of each violator;
12 (2) the statute violated; (3) the time period during which violations occurred; (4) specific
13 descriptions of the violations, including (a) the routes of exposure to Lead from the Product, and
14 (b) the specific type of Product sold and used in violation of Proposition 65; and (5) the name of
15 the specific Proposition 65-listed chemical that is the subject of the violations described in the
16 Notice.

17 18. Plaintiff also sent a Certificate of Merit for the Notice to the California Attorney
18 General, the District Attorneys of every county in California, the City Attorneys of every California
19 city with a population greater than 750,000 and to the named Defendant. In compliance with
20 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff’s
21 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
22 expertise who reviewed facts, studies or other data regarding the exposures to Lead alleged in the
23 Notice; and (2) based on the information obtained through such consultations, believes that there is
24 a reasonable and meritorious case for an enforcement action based on the facts alleged in the
25 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each
26 Certificate served on the Attorney General included factual information-provided on a confidential
27 basis-sufficient to establish the basis for the Certificate, including the identity of the person(s)
28

1 consulted by the Plaintiff's counsel and the facts, studies or other data reviewed by such persons.

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

6 20. Defendant knows and intend that individuals will consume the Product, thus
7 exposing them to Lead.

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

10
11 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
12 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
13 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
14 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division
15 2, § 12201).

16 22. Defendant has been informed of the Lead in their Products by the 60-Day Notice of
17 Violation and accompanying Certificate of Merit served on them.

18 23. Defendant also has constructive knowledge that the Products contain Lead due to
19 the widespread media coverage concerning the problem of Lead in consumer products.

20 24. As entities that manufacture, import, distribute and/or sell the Product for use in the
21 California marketplace, Defendant knows or should know that the Product contains Lead and that
22 individuals who consume the Product will be exposed to Lead. The Lead exposures to consumers
23 who consume the Product are a natural and foreseeable consequence of Defendant placing the
24 Product into the stream of commerce.

25 25. Nevertheless, Defendant continues to expose consumers to Lead without prior clear
26 and reasonable warnings regarding the reproductive hazards of Lead.

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

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2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendant from offering the Product 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 Plaintiff shall specify in further application to the Court;

3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to take action to stop ongoing unwarranted exposures to Lead resulting from use of Product sold, as Plaintiff shall specify in further application to the Court;

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: December 13, 2024

KJT LAW GROUP, LLP

By: _____

Tro Krikorian, Esq.
Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL