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**ELECTRONICALLY FILED**  
Superior Court of California  
County of Marin  
**11/22/2024**

James M. Kim, Clerk of the Court  
By: J. Chen, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF MARIN - UNLIMITED CIVIL JURISDICTION

13 KEEP AMERICA SAFE AND BEAUTIFUL,  
14 Plaintiff,  
15 v.  
16 AZURE FARMS, INC.; and DOES 1-30,  
17 inclusive,  
18 Defendants.

Case No. CV0004587

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

Violations of Health & Safety Code  
§ 25249.5, *et seq.* (Proposition 65)

19 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL (“KASB” or “Plaintiff”), acting in the  
20 public interest, alleges a cause of action against defendants AZURE FARMS, INC., and DOES 1-30  
21 (“Defendants”) for their alleged violations of Health & Safety Code § 25249.6, *et seq.*, as follows:

**INTRODUCTION AND NATURE OF THE ACTION**

22 1. KASB brings this representative action in the public interest on behalf of the citizens of  
23 the State of California. By this action, KASB seeks to enforce the People’s right to be informed of the  
24 health hazards caused by exposures to Lead, a heavy metal found in and in flax seeds manufactured,  
25 imported, distributed, sold and offered for sale by Defendants in the State of California.

26 2. By this Complaint, plaintiff seeks to remedy Defendants’ failure to warn individuals not  
27 covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.* (“consumers”)  
28 exposed to substances known to cause birth defects or other reproductive harm through exposures to  
Lead when they purchase, use and handle Defendants’ flax seeds.

1 3. Detectable levels of Lead are found in and in the flax seeds Defendants manufacture,  
2 import, sell and distribute for sale in California.

3 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
4 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), it is unlawful for a person in the course  
5 of doing business to knowingly and intentionally expose consumers and end-users in California to  
6 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first  
7 providing a “clear and reasonable warning” regarding the presence of these chemicals in Defendants’  
8 products and the harms associated with exposures to such chemicals.

9 5. Defendants manufacture, distribute, import, sell, and offer for sale, in and into  
10 California flax seeds (“PRODUCTS”) containing Lead, without providing a warning regarding the  
11 presence of and the harms associated with exposures to Lead in Defendants’ PRODUCTS. Such  
12 PRODUCTS include, without limitation, the *Azure Market Organics Flax Seeds, Organic, 33 oz.*  
13 *SKU: SE081 Lot# nn00099 UPC: 6 85051 55050 8 Best By: 09/20/2024.* Defendants’ violations  
14 subject them to civil penalties, enjoinder, preliminary and permanent injunctive relief. Health &  
15 Safety Code § 25249.7(a) and (b).

16 **PARTIES**

17 6. KASB is a non-profit corporation organized under the laws of California and acting in  
18 the public interest to reduce the presence of toxic chemicals found in consumer products and to  
19 enforce California citizens’ right to be informed about the presence of toxic chemicals in the products  
20 they purchase and use and the harms associated with exposures to such chemicals. KASB is a  
21 “person” within the meaning of Health & Safety Code § 25249.11(a). It brings this action in the  
22 public interest, pursuant to Health and Safety Code § 25249.7(d).

23 7. At all relevant times, defendant AZURE FARMS, INC. (“AZURE FARMS”) operates  
24 as a “person in the course of doing business” with ten (10) or more employees within the meaning of  
25 and as defined by Health and Safety Code §§ 25249.6 and 25249.11.

26 8. AZURE FARMS manufactures, imports, distributes, sells, and offers the PRODUCTS  
27 for sale or use in California, or implies by its conduct that it manufactures, imports, distributes, sells,  
28 and/or offers the PRODUCTS for sale or use to consumers and other individuals in California.

1           9. Doe Defendants 1-10 (“MANUFACTURER DEFENDANTS”) are each a “person in the  
2 course of doing business” within the meaning of and as defined by Health and Safety Code  
3 §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble,  
4 fabricate, and manufacture, or they each imply by their conduct they do so for one or more of the  
5 PRODUCTS sold and/or offered for sale or use to consumers and other individuals in California.

6           10. Doe Defendants 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person in the  
7 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
8 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport the  
9 PRODUCTS sold and offered for sale to consumers and other individuals in California, or they each  
10 imply by their conduct they distribute, transfer, and transport one or more of the PRODUCTS to  
11 individuals, businesses, and retailers for sale or use in California.

12           11. Doe Defendants 21-30 (“RETAILER DEFENDANTS”) are each a person in the course  
13 of doing business within the meaning of and as defined by Health and Safety Code §§ 25249.6 and  
14 25249.11. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
15 consumers and other individuals in California.

16           12. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown  
17 to KASB, who therefore, sues these Doe Defendants by their fictitious names, pursuant to Code of  
18 Civil Procedure § 474. Each of the fictitiously named Defendants is responsible in some manner for  
19 the acts and occurrences alleged herein and the violations and harms caused thereby. When  
20 ascertained, KASB will identify these Doe Defendants by their true names in an amendment to this  
21 Complaint.

22           13. AZURE FARMS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
23 DEFENDANTS, and RETAILER DEFENDANTS shall be referred to collectively herein as the  
24 “DEFENDANTS.”

### **JURISDICTION AND VENUE**

25  
26           14. This Court has jurisdiction pursuant to Health & Safety Code § 25249.7, which allows  
27 enforcement by any court of competent jurisdiction. The Superior Courts of the State of California  
28 have jurisdiction pursuant to California Constitution Article VI, section 10, which grants the Superior

1 Courts “original jurisdiction in all causes except those given by statute to other trial courts.” The  
2 statute under which this action is brought does not specify any other basis of subject matter  
3 jurisdiction.

4 15. This Court has jurisdiction over DEFENDANTS because DEFENDANTS, and each of  
5 them are a person, firm, corporation or association that is a citizen of the State of California, does  
6 sufficient business in California, has sufficient minimum contacts in California, and/or otherwise  
7 purposefully and intentionally avail themselves of the California market through their manufacture,  
8 importation, distribution, promotion, marketing and sale of PRODUCTS in California.  
9 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by this Court  
10 consistent with traditional notions of fair play and substantial justice.

11 16. Venue is proper in the Superior Court for the County of Marin, pursuant to Code of  
12 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
13 because KASB seeks civil penalties against DEFENDANTS, because one or more instances of  
14 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
15 conducted, and continue to conduct, business in the County of Marin with respect to the  
16 PRODUCTS.

17 **REGULATORY BACKGROUND AND LAW**

18 17. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and  
19 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o  
20 person in the course of doing business shall knowingly and intentionally expose any individual to a  
21 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable  
22 warning to such individual . . .”

23 18. Under the Act, a “person in the course of doing business” is defined as a business with  
24 ten (10) or more employees. Health & Safety Code § 25249.11(b). The Act prohibits businesses from  
25 exposing consumers to hazardous chemicals without first giving a “clear and reasonable warning.”  
26 Health & Safety Code § 25249.6.

27 19. Exposing consumers to hazardous chemicals means to cause consumers to ingest, inhale,  
28 contact via body surfaces or otherwise come into contact with a listed chemical. California Code of

1 Regulations (“Cal. Code Regs.”) Title 27, § 25102(i). An exposure to a hazardous chemical is  
2 defined as one that “results from a person’s acquisition, purchase, storage, consumption or other  
3 reasonably foreseeable use of a product...” Cal. Code Regs. Tit. 27, § 25600(h).

4 20. Under Proposition 65, persons violating the statute may be enjoined in any court of  
5 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.  
6 Health & Safety Code § 25249.7.

7 21. On February 27, 1987, pursuant to Proposition 65 implementing regulations, California  
8 listed Lead as a chemical known to cause birth defects or other reproductive harm. Lead became  
9 subject to the “clear and reasonable warning” requirements one year later, on February 27, 1988. Cal.  
10 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

11 22. On October 1, 1992, pursuant to Proposition 65 implementing regulations, California  
12 listed Lead as a chemical known to cause cancer. Lead became subject to the “clear and reasonable  
13 warning” requirements one year later, on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c);  
14 Health & Safety Code §§ 25249.8, 25249.10(b).

15 **STATEMENT OF FACTS**

16 23. DEFENDANTS sell and offer their PRODUCTS for sale in California without a clear  
17 and reasonable warning in violation of Cal. Code Regs. Tit. 27, § 25600, *et seq.*

18 24. DEFENDANTS’ PRODUCTS expose consumers and end-users in California to Lead at  
19 levels requiring a warning under Proposition 65 when they touch, handle or otherwise contact the  
20 PRODUCTS during reasonably foreseeable and intended use.

21 25. On September 9, 2024, KASB served a 60-Day Notice of Violation (“Notice”), together  
22 with the required certificate of merit, on AZURE FARMS, the Office of the Attorney General, and all  
23 requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales of the  
24 PRODUCTS, consumers and end-users in California were, and are, exposed to Lead without first  
25 receiving the “clear and reasonable warning” required by Proposition 65.

26 26. After receiving plaintiff’s Notice, no public enforcement agency has commenced or is  
27 diligently prosecuting a cause of action against DEFENDANTS to enforce the alleged violations of  
28 Proposition 65 that are the subject of the Notices.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All DEFENDANTS)**

3 27. KASB realleges and incorporates by reference, as if fully stated herein, the allegations  
4 set forth in Paragraphs 1 through 26, inclusive.

5 28. DEFENDANTS' PRODUCTS contain Lead in levels requiring a clear and reasonable  
6 warning under Proposition 65.

7 29. DEFENDANTS know or should have known their PRODUCTS contain Lead. As a  
8 result of plaintiff's Notices, DEFENDANTS now possess actual knowledge of the presence of Lead  
9 in their PRODUCTS.

10 30. DEFENDANTS' PRODUCTS expose consumers, end-users, and other individuals in  
11 California to Lead through dermal contact and ingestion during the reasonably foreseeable and  
12 intended use of the PRODUCTS.

13 31. The normal and reasonably foreseeable use of the PRODUCTS causes exposures to  
14 Lead.

15 32. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS  
16 exposes consumers, end-users, and other individuals to Lead through dermal contact and/or ingestion.

17 33. DEFENDANTS intend to expose consumers, end-users, and other individuals in  
18 California to Lead during their reasonably foreseeable and intended use of the PRODUCTS. Such  
19 exposures to Lead occur through DEFENDANTS deliberate and non-accidental participation in the  
20 California market.

21 34. The exposures to Lead caused by DEFENDANTS and endured by consumers and other  
22 individuals in California are not exempt from the "clear and reasonable warning" requirements of  
23 Proposition 65.

24 35. DEFENDANTS failed to provide a "clear and reasonable warning" to consumers and  
25 other individuals in California exposed to Lead through dermal contact and/or ingestion during their  
26 reasonably foreseeable and intended use of the PRODUCTS. Defendants continue to fail to provide  
27 such warning.  
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1           36. Contrary to the express policy and statutory prohibition of Proposition 65, consumers  
2 are exposed to Lead through dermal contact and ingestion during their use of PRODUCTS  
3 DEFENDANTS sold, sell and offer for sale without a “clear and reasonable warning.” Such  
4 consumers and other individuals in California suffer irreparable harms for which they have no plain,  
5 speedy, or adequate remedy at law.

6           37. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale  
7 or use in violation of Health and Safety Code § 25249.6. DEFENDANTS’ violations continue beyond  
8 their receipt of KASB’s Notices. As such, DEFENDANTS’ violations are ongoing and continuous in  
9 nature and, unless enjoined, will continue in the future.

10          38. Pursuant to Health and Safety Code § 25249.7(b), and as a consequence their acts and  
11 omissions, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per  
12 violation.

13          39. As a consequence of DEFENDANTS’ acts and omissions, Health and Safety Code  
14 § 25249.7(a) specifically authorizes the Court to grant the relief prayed for herein.

15   **PRAYER FOR RELIEF**

16           Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,  
17 as follows:

18           1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
19 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or  
20 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and  
21 reasonable warning” to consumers regarding the presence of, and the harms associated with,  
22 exposures to Lead;

23           2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and  
24 permanent injunctions mandating DEFENDANTS recall PRODUCTS intended for sale in or into  
25 California that do not bear a clear and reasonable warning;

26           3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the  
27 amount of \$2,500 per violation, according to proof at trial;

28           4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit; and

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5. That the Court grant such further relief as it deems just and equitable.

Dated: November 22, 2024

Respectfully submitted,  
SEVEN HILLS LLP

By:   
Kimberly Gates Johnson  
Attorneys for Plaintiff  
KEEP AMERICA SAFE AND BEAUTIFUL