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County of Los Angeles
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By M. Ceballos, Deputy Clerk

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES**

13 Clean Product Advocates LLC,) Case No. **26NWCV00377**
14)
15 PLAINTIFF,) COMPLAINT FOR PENALTY AND
16) INJUNCTION
17 vs.)
18) Violation of Proposition 65,
19 Dardanel, Inc.; DOES 1 -100,) the Safe Drinking Water and
20) Toxic Enforcement Act of 1986
21 DEFENDANTS.) (Health & Safety Code Sections
22) 25249.5, et. seq.)
23)
24) ACTION IS AN UNLIMITED CIVIL
25) CASE (exceeds \$25,000.00)
26)
27)
28)

1 INTRODUCTION

2 1. This Complaint is a representative action brought by
3 Clean Product Advocates, LLC ("Plaintiff" or "CPA") in the
4 public interest of the citizens of the State of California (the
5 "People"). Plaintiff seeks to remedy Defendants' failure to
6 inform the People of exposure to "Lead", a known carcinogen.
7 Defendants continue to expose consumers to Lead by either
8 manufacturing, and/or importing, and/or selling and/or
9 distributing food products including, but not limited to, Better
10 Goods Mexican Tuna Salad Bowl ("Product"). Defendants therefore
11 know and intend that customers will ingest products containing
12 Lead under California's Safe Drinking Water and Toxic
13 Enforcement Act of 1986, and California Health and Safety Code
14 sections 25249.6 et. seq. ("Proposition 65") which states that
15 "[n]o person in the course of doing business shall knowingly and
16 intentionally expose any individual to a chemical known to the
17 state to cause cancer or reproductive toxicity without first
18 giving clear and reasonable warning to such individual"
19 (Health & Safety Code Section 25249.6).
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21 2. California has identified and listed Lead as a chemical
22 known to cause cancer as early as on or about October 1, 1992,
23 and as a chemical known to cause developmental/ reproductive
24 toxicity as of on or about February 27, 1987.

25 3. Defendants have failed to sufficiently warn consumers and
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1 individuals in California about potential exposure to Lead in
2 connection with Defendants' manufacture and/or import, and/or
3 sale, and/or distribution of the Product in violation of
4 Proposition 65.

5 4. Plaintiff seeks injunctive relief compelling Defendants
6 to sufficiently warn consumers in California before exposing
7 them to Lead in Products (Health & Safety Code Section
8 25249.7(a)). Plaintiff also seeks civil penalties against
9 Defendants for their violations of Proposition 65 along with
10 reasonable attorney's fees and legal costs (Health & Safety Code
11 Section 25249.7(b)).

12 PARTIES

13 5. Plaintiff CPA is a LLC operating in the State
14 of California dedicated to protecting the health of California
15 citizens through the elimination or reduction of toxic exposure
16 from consumer products. It brings this action in the public
17 interest pursuant to Health & Safety Code Section 25249.7.

18 6. Defendant Dardanel, Inc. is a business entity, that
19 either manufactures and/or imports, and/or sells and/or
20 distributes products in Los Angeles County and throughout the
21 State of California, within the meaning of Health & Safety Code
22 Section 25249.11.

23 7. Defendants DOES 1 through 100, inclusive, are sued
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1 herein under fictitious names. Their true names and capacities
2 are unknown to Plaintiff. When their true names and capacities
3 are ascertained, plaintiff will amend this complaint by
4 inserting their true names and capacities herein. Plaintiff is
5 informed and believes and thereon alleges, that each of the
6 fictitiously named defendants is responsible in some manner for
7 the occurrences alleged in this complaint and that Plaintiff's
8 damages as alleged in this complaint were proximately caused by
9 such defendants.
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11 8. Plaintiff is informed and believes and thereon alleges,
12 that at all times alleged in this complaint, each defendant was
13 the agent, alter ego, servant, joint venturer, joint employer
14 and/or employee, of each of the remaining defendants, and in
15 doing the things hereinafter alleged, was acting within the
16 course and scope of said relationships and with the permission
17 and consent of all other co-defendants. All conduct was also
18 ratified by Defendants and each of them.
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20 JURISDICTION AND VENUE

21 9. California Constitution Article VI, Section 10, grants
22 the Superior Court original jurisdiction in all cases except
23 those given by statute to other trial courts. The Health and
24 Safety Code statutes upon which this action is based does not
25 give jurisdiction to any other Court. As such, this Court has
26 jurisdiction over this action.
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1 10. Venue is proper in Los Angeles County Superior Court
2 pursuant to Code of Civil Procedure Sections 394, 395 and 395.5
3 as wrongful conduct as alleged in this complaint has occurred
4 and continues to occur in this County.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65 - Against All Defendants**

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8 11. Plaintiff incorporates by reference herein, each and
9 every allegation set forth above in this complaint.

10 12. Proposition 65 mandates that California citizens be
11 informed about exposures to chemicals that cause cancer, birth
12 defects, and other reproductive harm.

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14 13. More than sixty days prior to the filing of this
15 lawsuit, Plaintiff issued a 60-Day Notice of Violation as
16 required by and in compliance with Proposition 65. Plaintiff
17 also provided said Notice to the various required public
18 enforcement agencies along with a Certificate of Merit. The
19 Notice alleged a violation of Proposition 65 by failing to
20 sufficiently warn consumers in California of the health hazards
21 associated with Lead contained in the product.

22 14. The appropriate public enforcement agencies provided
23 with the Notice failed to commence and diligently prosecute a
24 cause of action against Defendants.

25 15. At all times relevant herein, Defendants manufactured
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1 and/or imported and/or sold and/or distributed the above
2 described product, containing Lead in violation of Health and
3 Safety Code Sections 25249.6 et. seq. Plaintiff is informed and
4 believes and thereon alleges that such violation has continued
5 after service of the Notice described above and such conduct
6 will continue to occur into the future.

7 16. In manufacturing, and/or importing, and/or selling
8 and/or distributing the above described product, Defendants
9 failed to provide clear and reasonable warnings to consumers in
10 the State of California who may be exposed to Lead through
11 reasonably foreseeable use of the product.

12 17. The product described above exposed individuals to Lead
13 through direct ingestion of the product described above in this
14 complaint. This exposure is a natural and foreseeable
15 consequence of Defendants placing the product into the stream of
16 commerce. As such Defendants intend that consumers will ingest
17 said product, exposing them to Lead.

18 18. Defendants knew or should have known that their
19 product contained Lead and exposed individuals to Lead as
20 described above in this complaint. The Notice described above
21 informed Defendants of the presence of Lead in their product.
22 Likewise, media coverage concerning Lead related chemicals in
23 consumer products provided "Constructive Notice" to Defendants.
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1 Defendants' actions, therefore, were deliberate and not
2 accidental.

3 19. Individuals exposed to Lead contained in
4 Defendants' Product through direct ingestion resulting from
5 reasonably foreseeable use of the product have suffered and
6 continue to suffer irreparable harm. There is no other plain,
7 speedy or adequate remedy at law other than the relief requested
8 in this complaint.

9 20. Defendants are liable for a maximum civil penalty of
10 \$2,500.00 per day for each violation of Proposition 65 pursuant
11 to Health and Safety Code Section 252497(b). Injunctive relief
12 is also appropriate pursuant to Health and Safety Code Section
13 25249.7(a).

14 21. Defendants knew or should have known that their
15 product contained Lead and exposed individuals to Lead as
16 described above in this complaint. Also, the Notice stated that
17 there was Lead in the subject product. Likewise, media coverage
18 concerning Lead and related chemicals in consumer products
19 provided "Constructive Notice" to Defendants.
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22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff prays for judgment against Defendants,
24 and each of them, as follows:

25 1. Civil penalties in the amount of \$2,500.00 per day for
26 each violation of the law as described above in this complaint;
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