

**FILED**

Superior Court of California  
County of San Francisco

AUG 15 2016

CLERK OF THE COURT

BY: *Clara*  
Deputy Clerk

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9  
10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SAN FRANCISCO**

12 TAMAR KALOUSTIAN, in the public  
13 interest,

14 Plaintiff,

15 v.

16 NAVITAS LLC, a California limited  
17 liability company; and DOES 1  
18 through 100, inclusive,

19 Defendants.

Civil Action No.:

**CGC-16-553700**

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES**

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

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24 **BY FAX**  
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1 Tamar Kaloustian, in the public interest, based on  
2 information and belief and investigation of counsel, except for  
3 information based on knowledge, hereby makes the following  
4 allegations.

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7 **INTRODUCTION**

8 1. This Complaint seeks to remedy Defendant's continuing  
9 failure to adequately warn individuals in California that they  
10 are being exposed to lead, a chemical known to the State of  
11 California to cause birth defects and other reproductive harm.  
12 Such exposures have occurred, and continue to occur, through the  
13 manufacture, distribution, sale and consumption of Defendant's  
14 Navitas Naturals Organic Mulberry Berries (the "Product"). The  
15 Product is available to consumers in California through a  
16 multitude of retail channels including, without limitation (a)  
17 third-party traditional brick-and-mortar retail locations; (b)  
18 via the internet through Defendant's website; and (c) via the  
19 internet through third-party retail websites. Consumers are  
20 exposed to lead when they consume the Product.

21  
22 2. Under California's Proposition 65, Health and Safety  
23 Code § 25249.5, et seq., it is unlawful for businesses to  
24 knowingly and intentionally expose individuals in California to  
25 chemicals known to the State to cause cancer, birth defects or  
26 other reproductive harm without providing clear and reasonable  
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1 not given by statute to other trial courts.

2 8. This Court has jurisdiction over Defendant as a  
3 business entity that does sufficient business, has sufficient  
4 minimum contacts in California or otherwise intentionally avails  
5 itself of the California market through the sale, marketing or  
6 use of the Product in California and/or by having such other  
7 contacts with California so as to render the exercise of  
8 jurisdiction over it by the California courts consistent with  
9 traditional notions of fair play and substantial justice.

11 9. Venue is proper in San Francisco County Superior Court  
12 because one or more of the violations arise in the County of San  
13 Francisco.

14 **BACKGROUND FACTS**

15 10. The People of the State of California have declared by  
16 initiative under Proposition 65 their right "[t]o be informed  
17 about exposures to chemicals that cause cancer, birth defects, or  
18 other reproductive harm." Proposition 65 § 1(b).

19 11. To effectuate this goal, Proposition 65 prohibits  
20 exposing people to chemicals listed by the State of California as  
21 known to cause cancer, birth defects or other reproductive harm  
22 above certain levels without a "clear and reasonable warning"  
23 unless the business responsible for the exposure can prove that  
24 it fits within a statutory exemption. Health & Safety Code §  
25 25249.6 states in pertinent part:  
26  
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1 No person in the course of doing business shall knowingly  
2 and intentionally expose any individual to a chemical known  
3 to the state to cause cancer or reproductive toxicity  
4 without first giving clear and reasonable warning to such  
5 individual...

6 12. On February 27, 1987, the State of California  
7 officially listed lead as a chemical known to cause reproductive  
8 toxicity. Lead is specifically identified as a reproductive  
9 toxicant under two subcategories: "developmental reproductive  
10 toxicity," which means harm to the developing fetus, and "male  
11 reproductive toxicity," which means harm to the male reproductive  
12 system. 27 California Code of Regulations ("C.C.R.") § 27001(c).  
13 On May 1, 1998, one year after it was listed as a chemical known  
14 to cause reproductive toxicity, lead became subject to the clear  
15 and reasonable warning requirement regarding reproductive  
16 toxicants under Proposition 65.

17 13. The level of exposure to a chemical causing  
18 reproductive toxicity under Proposition 65 is determined by  
19 multiplying the level in question times the reasonably  
20 anticipated rate of exposure for an individual to a given medium.  
21 27 C.C.R. § 25821(b). for exposures to consumer products, the  
22 level of exposure is calculated using the reasonably anticipated  
23 rate of intake or exposure for average users of the consumer  
24 product. 27 C.C.R. § 25821(C)(2).

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

5  
6 15. During the relevant one-year period herein, no clear  
7 and reasonable warning was provided with the Product regarding  
8 the reproductive hazards of lead.

9 16. Any person acting in the public interest has standing  
10 to enforce violations of Proposition 65 provided that such person  
11 has supplied the requisite public enforcers with a valid 60-Day  
12 Notice of Violation and such public enforcers are not diligently  
13 prosecuting the action within such time. Health & Safety Code §  
14 25249.7(d).

15  
16 17. More than sixty days prior to naming each Defendant in  
17 this lawsuit, Plaintiff provided a 60-Day "Notice of Violation of  
18 Proposition 65" to the California Attorney General, the District  
19 Attorneys of every county in California, the City Attorneys of  
20 every California city with a population greater than 750,000 and  
21 to the named Defendant. In compliance with Health & Safety Code §  
22 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
23 following information: (1) the name and address of each violator;  
24 (2) the statute violated; (3) the time period during which  
25 violations occurred; (4) specific descriptions of the violations,  
26 including (a) the routes of exposure to cadmium from the Product,  
27

1 and (b) the specific type of Product sold and used in violation  
2 of Proposition 65; and (5) the name of the specific Proposition  
3 65-listed chemical that is the subject of the violations  
4 described in each Notice.

5  
6 18. Plaintiff also sent a Certificate of Merit for each  
7 Notice to the California Attorney General, the District Attorneys  
8 of every county in California, the City Attorneys of every  
9 California city with a population greater than 750,000 and to the  
10 named Defendant. In compliance with Health & Safety Code §  
11 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that  
12 Plaintiff's counsel: (1) has consulted with one or more persons  
13 with relevant and appropriate experience or expertise who  
14 reviewed facts, studies or other data regarding the exposures to  
15 Lead alleged in each Notice; and (2) based on the information  
16 obtained through such consultations, believes that there is a  
17 reasonable and meritorious case for a citizen enforcement action  
18 based on the facts alleged in each Notice. In compliance with  
19 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each  
20 Certificate served on the Attorney General included factual  
21 information-provided on a confidential basis-sufficient to  
22 establish the basis for the Certificate, including the identity  
23 of the person(s) consulted by the Plaintiff's counsel and the  
24 facts, studies or other data reviewed by such persons.  
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27 19. None of the public prosecutors with the authority to  
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1 prosecute violations of Proposition 65 has commenced and/or is  
2 diligently prosecuting a cause of action against Defendants under  
3 Health & Safety Code § 25249.5, *et seq.*, based on the claims  
4 asserted in each of Plaintiff's Notices.

5       20. Defendant both knows and intends that individuals will  
6 consume the Product, thus exposing them to lead.

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

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

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

20       23. Defendant also has constructive knowledge that its  
21 Products contain lead due to the widespread media coverage  
22 concerning the problem of lead in consumer products.

23       24. As an entity that manufactures, imports, distributes  
24 and/or sells the Product for use in the California marketplace,  
25 Defendant knows or should know that the Product contains lead and  
26 that individuals who consume the Product will be exposed to lead.  
27 The lead exposures to consumers who consume the Product are a



1 natural and foreseeable consequence of Defendant's placing the  
2 Product into the stream of commerce.

3 25. Nevertheless, Defendant continues to expose consumers  
4 to lead without prior clear and reasonable warnings regarding the  
5 reproductive hazards of lead.  
6

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

9 27. Any person "violating or threatening to violate"  
10 Proposition 65 may be enjoined in any court of competent  
11 jurisdiction. Health & Safety Code § 25249.7. "Threaten to  
12 violate" is defined to mean "to create a condition in which there  
13 is a substantial probability that a violation will occur." Health  
14 & Safety Code § 25249.11(e). Proposition 65 provides for civil  
15 penalties not to exceed \$2,500 per day for each violation of  
16 Proposition 65.  
17

18 **CAUSE OF ACTION**

19 (Violations of the Health & Safety Code 25249.6)

20 28. Plaintiff realleges and incorporates by reference as if  
21 specifically set forth herein Paragraphs 1 through 27, inclusive.  
22

23 29. By placing the Product into the stream of commerce,  
24 each Defendant is a person in the course of doing business within  
25 the meaning of Health & Safety Code § 25249.11.

26 30. Lead is a chemical listed by the State of California as  
27 known to cause birth defects and other reproductive harm.  
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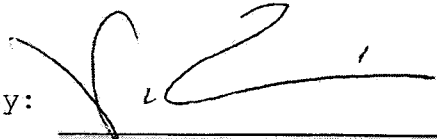
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to take action to stop ongoing unwarranted exposures to lead resulting from use of Product sold, as Plaintiff shall specify in further application to the Court;

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: August 15, 2016

KJT LAW GROUP, LLP

By: 

Vache Thomassian  
Attorneys for Plaintiff