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**FILED**  
ALAMEDA COUNTY

SEP 28 2016

CLERK OF THE SUPERIOR COURT

By *J. Thomas*  
JANIE THOMAS, Deputy

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA**

ERIKA MCCARTNEY, in the public interest, )

Plaintiff, )

v. )

NAVITAS LLC, a California limited liability )  
company; and DOES 1 through 500, inclusive, )

Defendants. )

CIVIL ACTION NO. **RG16833056**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

1 Erika McCartney, in the public interest, based on information and belief and investigation of  
2 counsel, except for information based on knowledge, hereby makes the following allegations.

3  
4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendant's failure to adequately warn individuals  
6 in California that they are being exposed to lead, a chemical known to the State of California to  
7 cause cancer, birth defects and other reproductive harm (hereinafter "Lead"). Such exposures have  
8 occurred, and continue to occur, through the manufacture, distribution, sale and consumption of  
9 Defendant's Navitas Naturals Organic Goji Berries (the "Product"). The Product is available to  
10 consumers in California through a multitude of retail channels which may include, without  
11 limitation: (a) third-party traditional brick-and-mortar retail locations; (b) via the internet through  
12 Defendant's website; and (c) via the internet through third-party retail websites. Consumers are  
13 exposed to Lead when they consume the Product.  
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16 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is  
17 unlawful for businesses to knowingly and intentionally expose individuals in California to  
18 chemicals known to the State to cause cancer, birth defects or other reproductive harm without  
19 providing clear and reasonable warnings to individuals prior to their exposure. Defendant  
20 introduces a product contaminated with significant quantities of Lead into the California  
21 marketplace, exposing consumers of the Product to Lead.  
22

23 3. Despite the fact that the Defendant exposes consumers to Lead, during the relevant  
24 period Defendant provided no warning about the reproductive hazards associated with Lead  
25 exposure. Defendant's conduct thus violates the warning provision of Proposition 65, Health &  
26 Safety Code § 25249.6.

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**PARTIES**

4. Plaintiff brings this enforcement action in the public interest pursuant to Health & Safety Code § 25249.7(d).

5. Defendant NAVITAS LLC ("NAVITAS") is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant manufactures, distributes and/or sells the Product for sale and use in California.

6. The true names of DOES 1 through 500 are unknown to Plaintiff at this time. When their identities are ascertained, the Complaint shall be amended to reflect their true names.

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**JURISDICTION AND VENUE**

7. The Court has jurisdiction over this action pursuant to Health & Safety Code § 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.

8. This Court has jurisdiction over Defendant as a business entity that does sufficient business, has sufficient minimum contacts in California or otherwise intentionally avails itself of the California market through the sale, marketing or use of the Product in California and/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.

9. Venue is proper in Alameda County Superior Court because one or more of the violations arise in the County of Alameda.

**BACKGROUND FACTS**

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2       10.    The People of the State of California have declared by initiative under Proposition  
3 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
4 other reproductive harm.” Proposition 65 § 1(b).

5       11.    To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed  
6 by the State of California as known to cause cancer, birth defects or other reproductive harm above  
7 certain levels without a “clear and reasonable warning” unless the business responsible for the  
8 exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6  
9 states, in pertinent part:  
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11           No person in the course of doing business shall knowingly and intentionally  
12           expose any individual to a chemical known to the state to cause cancer or  
13           reproductive toxicity without first giving clear and reasonable warning to such  
14           individual ....

14       12.    On February 27, 1987, the State of California officially listed Lead as a chemical  
15 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant  
16 under three subcategories: “developmental reproductive toxicity,” which means harms to the  
17 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive  
18 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27  
19 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27, 1988, one year after it was  
20 listed as a chemical known to cause reproductive toxicity, Lead became subject to the clear and  
21 reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Ibid*;  
22 Health & Safety Code § 25249.10(b).

24       13.    On October 1, 1992, the State of California officially listed Lead and Lead  
25 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
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1 listed as chemicals known to cause cancer, Lead and Lead compounds became subject to the clear  
2 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
3 27001(c); Health & Safety Code § 25249.10(b).

4 14. There is no safe level of exposure to Lead and even minute amounts of Lead have  
5 been proven harmful to children and adults. See Report of the Advisory Committee on Childhood  
6 Lead Poisoning Prevention of the Centers For Disease Control and Prevention, "Low Level Lead  
7 Exposure Harms Children: A Renewed Call For Primary Prevention," January 2, 2012. A study  
8 performed by the California Office of Environment Health Hazard Assessment determined that  
9 exposures to Lead even at levels previously considered safe have now been shown to cause adverse  
10 health effects including reduced cognitive ability and significant diminution of intellectual  
11 potential. Carlisle, *et al.*, "A Blood Lead Benchmark for Assessing Risks from Childhood Lead  
12 Exposure," *Journal of Environmental Science and Health*, 44, 2009. This conclusion is based on a  
13 meta study of 1,333 children who participated in seven international studies. Lanphear, *et al.*,  
14 "Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International  
15 Pooled Analysis," *Environmental Health Perspectives*, 113:7, 2005.

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18 15. Lead exposures for pregnant women are also of particular concern in light of  
19 evidence that even short-term Lead exposures *in utero* may have long-term harmful effects. Hu,  
20 H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
21 Development," *Environmental Health Perspectives* 114:11,2 006; Schnaas, Lourdes, *et al.*,  
22 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*  
23 *Health Perspectives* 114:5, 2006. Increased Lead exposure during pregnancy has also been shown  
24 to cause increased risk of premature birth and increased blood pressure in both the mother during  
25 pregnancy and the child after birth. Vigeh, *et al.*, "Blood Lead at Currently Acceptable Levels May  
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1 Cause Preterm Labour,” *Occupational Environmental Medicine*, 68:231-234, 2010; Zhang, *et al.*,  
2 “Association Between Prenatal Lead Exposure and Blood Pressure in Children,” *Environmental*  
3 *Health Perspectives*, 120:3, 2012; Wells, *et al.*, “Low-Level Lead Exposure and Elevations in  
4 Blood Pressure During Pregnancy,” 119:5, 2011.

5 16. The level of exposure to a chemical causing reproductive toxicity under Proposition  
6 65 is determined by multiplying the level in question times the reasonably anticipated rate of  
7 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). For exposures to consumer  
8 products, the level of exposure is calculated using the reasonably anticipated rate of intake or  
9 exposure for average users of the consumer product. 27 C.C.R. § 25821(c)(2).

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

16 18. During the relevant period herein, no clear and reasonable warning was provided  
17 with the Product regarding the reproductive hazards of Lead.

18 19. Any person acting in the public interest has standing to enforce violations of  
19 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
20 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
21 within such time. Health & Safety Code § 25249.7(d).

22 20. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff  
23 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, the  
24 District Attorneys of every county in California, the City Attorneys of every California city with a  
25 population greater than 750,000 and to the named Defendant. In compliance with Health & Safety  
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1 Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1)  
2 the name and address of each violator; (2) the statute violated; (3) the time period during which  
3 violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure  
4 to Lead from the Product, and (b) the specific type of Product sold and used in violation of  
5 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of  
6 the violations described in each Notice.

7  
8 21. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
9 General, the District Attorneys of every county in California, the City Attorneys of every California  
10 city with a population greater than 750,000 and to the named Defendant. In compliance with  
11 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff's  
12 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or  
13 expertise who reviewed facts, studies or other data regarding the exposures to Lead alleged in the  
14 Notice; and (2) based on the information obtained through such consultations, believes that there is  
15 a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in  
16 each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each  
17 Certificate served on the Attorney General included factual information - provided on a confidential  
18 basis - sufficient to establish the basis for the Certificate, including the identity of the person(s)  
19 consulted by the Plaintiff's counsel and the facts, studies or other data reviewed by such persons.

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21 22. None of the public prosecutors with the authority to prosecute violations of  
22 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
23 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of  
24 Plaintiff's Notices.  
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1           23. Defendant both knows and intends that individuals will consume the Product, thus  
2 exposing them to Lead.

3           24. Under Proposition 65, an exposure is "knowing" where the party responsible for  
4 such exposure has:

5                           knowledge of the fact that a[n] ... exposure to a chemical listed pursuant  
6 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that  
7 the ... exposure is unlawful is required.

8           27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.,* Final  
9 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §  
10 12201).

11           25. Defendant has further been informed of the Lead in the Product by the 60-Day  
12 Notice of Violation and accompanying Certificate of Merit served on them.

13           26. Defendant also has constructive knowledge that its Product contains Lead due to the  
14 widespread media coverage concerning the problem of Lead in consumer products in general.

15           27. As an entity that manufactures, imports, distributes and/or sells the Product for use  
16 in the California marketplace, Defendant knows or should know that the Product contains Lead and  
17 that individuals who consume the Product will be exposed to Lead. The Lead exposures to  
18 consumers who consume the Product are a natural and foreseeable consequence of Defendant's  
19 placing the Product into the stream of commerce.  
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21           28. Nevertheless, on information and belief, Defendant continues to expose consumers  
22 to Lead without prior clear and reasonable warnings regarding the reproductive hazards of Lead.  
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24           29. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior  
25 to filing this Complaint.  
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1           30. Any person "violating or threatening to violate" Proposition 65 may be enjoined in  
2 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is  
3 defined to mean "to create a condition in which there is a substantial probability that a violation  
4 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not  
5 to exceed \$2,500 per day for each violation of Proposition 65.

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7   **CAUSE OF ACTION**

8   **(Violations of the Health & Safety Code 25249.6)**

9           31. Plaintiff restates and realleges paragraphs 1 through 30 as though fully set forth  
10 herein.

11           32. By placing the Product into the stream of commerce, Defendant is a person in the  
12 course of doing business within the meaning of Health & Safety Code § 25249.11.

13           33. Lead is a chemical listed by the State of California as known to cause cancer, birth  
14 defects and other reproductive harm.

15           34. Defendant knows that average use of the Product will expose users of the Product to  
16 Lead. Defendant intends that the Product be used in a manner that results in exposures to Lead  
17 from the Products.

18           35. Defendant has failed to provide clear and reasonable warnings regarding the  
19 reproductive toxicity of Lead to users of the Products.  
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21           36. By committing the acts alleged above, Defendant has at times relevant to this  
22 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Lead  
23 without first giving clear and reasonable warnings to such individuals regarding the reproductive  
24 toxicity of Lead.  
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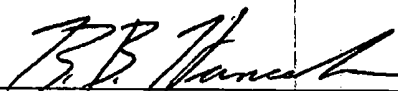
**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against the Defendant of up to \$2,500 per day for each violation of Proposition 65 occurring on or after the statutory period;
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: September 28, 2016.

PACIFIC JUSTICE CENTER

By:   
Robert B. Hancock  
Attorneys for Plaintiff