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**ENDORSED  
FILED  
ALAMEDA COUNTY**  
  
JAN 07 2019  
  
CLERK OF THE SUPERIOR COURT  
By CURTIYAH GANTER  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

AS YOU SOW,  
  
Plaintiff,  
  
vs.  
  
ABBOTT LABORATORIES,  
  
Defendant.

Case No.: RG16822576  
  
**FIRST AMENDED COMPLAINT**  
  
Unlimited Civil Case

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## INTRODUCTION

1. California’s Safe Drinking Water and Toxic Enforcement Act (“Proposition 65” or “the Act”), Health & Safety Code §25249.5 *et seq.*, prohibits any person in the course of doing business from knowingly and intentionally exposing any individual to a chemical known to the State of California to cause cancer or reproductive toxicity, without first giving clear and reasonable warning of such exposure. Health & Safety Code §25249.6. This prohibition applies with equal force against business entities that produce, distribute, or sell consumer products, where the reasonable intended use of such products would result in an exposure to a known carcinogen or reproductive toxin.

2. On February 27, 1987, the State of California officially listed lead as a chemical known to the State to cause reproductive toxicity.

3. On information and belief, Defendant Abbott Laboratories d/b/a Abbott Sales, Marketing & Distribution (hereinafter “Abbott” or “Defendant”) produces, distributes, and/or sells the ZonePerfect Nutrition Bar Double Dark Chocolate and ZonePerfect Nutrition Bar Double Dark Chocolate Almond (the “Covered Products”), in California.

4. Lead is present in the Covered Products. Consumers are exposed to this chemical when they ingest the Covered Products.

5. Defendant has failed to provide a clear and reasonable warning that ingestion of the Covered Products will result in exposure to lead, a chemical known to the State of California to cause reproductive toxicity. Accordingly, Plaintiff As You Sow seeks an order requiring that Defendant take measures to ensure that California consumers ingesting the Covered Products are not exposed to harmful levels of lead, or provide a clear and reasonable warning that ingestion of the Covered Products will result in exposure to a chemical, namely lead, known to the State of California to cause reproductive toxicity.

## PARTIES

6. Plaintiff AS YOU SOW (“Plaintiff”) is an Oakland-based non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights,

1 environmental education, and corporate accountability. As You Sow brings this action on its own  
2 behalf and in the public interest pursuant to Health and Safety Code §25249.7(d).

3 7. Defendant ABBOTT LABORATORIES d/b/a ABBOTT SALES, MARKETING &  
4 DISTRIBUTION is, on information and belief, a business entity with ten or more employees that has  
5 produced, distributed, and/or sold in California products called ZonePerfect Nutrition Bar Double  
6 Dark Chocolate and ZonePerfect Nutrition Bar Double Dark Chocolate Almond, which contain lead.

### 7 JURISDICTION AND VENUE

8 8. This Court has jurisdiction over this action pursuant to Article VI, §10 of the  
9 California Constitution because this case is not a cause given by statute to other courts.

10 9. This Court has jurisdiction over Defendant because it is a business entity that  
11 conducts sufficient business, has sufficient minimum contacts in, or otherwise intentionally avails  
12 itself of the market in California through the manufacture, sale, distribution, and/or use of products  
13 in California.

14 10. Venue is proper in this Court because the obligation or liability arises, at least in part,  
15 in the County of Alameda.

### 16 LEGAL BACKGROUND

17 11. In 1986, the voters of California overwhelmingly enacted Proposition 65.

18 12. Among other requirements, Proposition 65 provides that “[n]o person in the course of  
19 doing business shall knowingly and intentionally expose any individual to a chemical known to the  
20 State to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
21 such individual, except as provided in Section 25249.10.” Health & Safety Code §25249.6.

22 13. Proposition 65 establishes a procedure by which the State is to develop a list of  
23 chemicals “known to the State to cause cancer or reproductive toxicity.” Health & Safety Code  
24 §25249.8. No warning is required for a chemical until one year after the State lists the chemical.  
25 Health & Safety Code §25249.10(b).

26 14. “Whenever a clear and reasonable warning is required under Section 25249.6 of the  
27 Act, the method employed to transmit the warning must be reasonably calculated, considering the  
28 alternative methods available under the circumstances, to make the warning message available to the

1 individual prior to exposure.” Code Regs., tit. 27, §25601. The warning that is provided “must  
2 clearly communicate that the chemical in question is known to the State to cause cancer, or birth  
3 defects or other reproductive harm.” *Id.*

4 15. The warning must be provided “to any person to whom the product is sold or  
5 transferred unless the product is packaged or labeled with a clear and reasonable warning.” Code  
6 Regs., tit. 27, §25603(c).

7 16. According to the applicable regulations, a clear and reasonable warning may be  
8 provided through warnings on a product, or through shelf warnings or signs, but such warnings must  
9 be “prominently placed . . . with such conspicuousness, as compared with other words, statements,  
10 designs, or devices in the label, labeling or display as to render it likely to be read and understood by  
11 an ordinary individual under customary conditions of purchase or use.” Code Regs., tit. 27,  
12 §25603.1(a)-(d); *see also Dowhal v. SmithKline Beecham Consumer Healthcare*, 32 Cal.4th 910,  
13 918 (2004) (“The warning may be communicated through product labeling, point-of-sale signs, or  
14 public advertising.”).

15 17. An exposure to a chemical in a consumer product is one that “results from a person’s  
16 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
17 good, or any exposure that results from receiving a consumer service.” Code Regs., tit. 27,  
18 §25602(b).

19 18. An exposure is knowing if the person or entity responsible for the exposure had or  
20 has “knowledge of the fact that . . . exposure to a chemical listed pursuant to Section 24249.8(a) of  
21 the Act is occurring.” Code Regs., tit. 27, §25102(n).

22 19. Pursuant to Health & Safety Code §25249.7, this Court has authority to enjoin “[a]ny  
23 person that violates or threatens to violate [§25249.6]” and to impose civil penalties “not to exceed  
24 two thousand five hundred dollars (\$2,500) per day for each violation in addition to any other  
25 penalty established by law.”

26 20. Private parties are entitled to bring an action to enforce the Act under Health & Safety  
27 Code §25249.7(d).

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## FACTUAL BACKGROUND

21. On February 27, 1987, lead was placed on the California Office of Environmental Health Hazard Assessment's list of chemicals known to the State to cause reproductive toxicity.

22. Plaintiff's testing at an independent laboratory demonstrates that the Zone Perfect products contain lead.

23. Since at least September 25, 2014, Defendant has produced, distributed, and/or sold the Covered Products in the State of California. The Covered Products are described on the product website as both a "nutrition bar" and an "energy bar." The product website states, "We took the dark, rich, irresistible chocolate flavor you love and doubled it to make this unbelievable energy bar." ZonePerfect website, <<http://zoneperfect.com/products#double-dark-chocolate>>.

24. On information and belief, Defendant intends that consumers ingest the Covered Products frequently and in large quantities. The Frequently Asked Question page of the website for the Covered Products states that "the recommended usage for ZonePerfect bars is 2-3 bars per day." The page also notes that "there is nothing harmful" about consuming even more than 2-3 bars per day. The page explains that ZonePerfect bars can serve as a "meal" or as a "nutritious snack." ZonePerfect website, <<http://zoneperfect.com/about/faq>>.

25. Defendant has had knowledge that the Covered Products it produces, distributes, and/or sells in California contains lead.

26. The primary route of exposure to lead from Defendant's product is ingestion. This exposure to hazardous lead results from the reasonably foreseeable use of the Covered Products.

27. Defendant has produced, distributed, and/or sold the Covered Products within the State of California without providing a clear and reasonable warning that the intended and reasonably foreseeable use of the Covered Products will result in consumers' exposure to a chemical known to the State of California to cause reproductive toxicity and birth defects ("Proposition 65 warning").

28. On information and belief, Defendant has produced, distributed, and/or sold the Covered Products within the State of California, without providing an adequate and reasonable warning as required by Proposition 65 since at least September 25, 2014.





**PROOF OF SERVICE**  
Code of Civil Procedure §1013

**CASE:** *As You Sow, v. Abbott Laboratories Inc., et al.*,  
**CASE NO:** Superior Court of California County of Alameda, RG16822576

I am employed in the City of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On January 7, 2019, I served the following document(s):

**FIRST AMENDED COMPLAINT**

on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

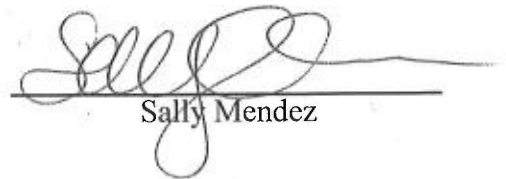
**By First Class Mail:** I placed the envelope, sealed and with first-class postage fully prepaid, for collection and mailing following our ordinary business practices. I am readily familiar with the practice of Altshuler Berzon LLP for the collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Mail Postal Service in San Francisco, California, for collection and mailing to the addressee on the date shown herein.

**By E-mail:** I caused the above listed document(s) to be delivered electronically by transmitting a PDF version to the email addresses listed in the service list below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 7, 2019 at San Francisco, California.

  
\_\_\_\_\_  
Sally Mendez