

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark Morrison 5015 Birch St, Suite 111 Newport Beach CA 92660 TELEPHONE NO.: 949-610-0834 FAX NO.: 206-316-8350 ATTORNEY FOR (Name): Clean Cannabis Initiative LLC		FOR COURT USE ONLY <div style="text-align: center; font-weight: bold; font-size: 1.2em;"> ENDORSED FILED ALAMEDA COUNTY AUG - 7 2018 </div> CLERK OF THE SUPERIOR COUR. By Lanette Buffin, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland California 94612 BRANCH NAME: Rene C. Davidson Courthouse		CASE NUMBER: <u>18915781</u> JUDGE: DEPT:
CASE NAME: CLEAN CANNABIS INITIATIVE, LLC, v. THCLEAR, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

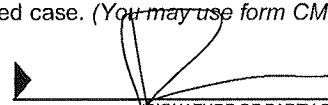
Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input checked="" type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 8-7-18
 Mark Morrison
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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8 Clean Cannabis Initiative, LLC

ENDORSED
FILED
ALAMEDA COUNTY
AUG - 7 2018

CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 CLEAN CANNABIS INITIATIVE, LLC,

12
13
14 Plaintiff,

15 v.

16 THCLEAR, *et al.*,

17 Defendants.
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Case No. _____


18915781

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

Health & Safety Code § 25249.5, *et seq.*

1 Plaintiff Clean Cannabis Initiative, LLC, (“Plaintiff”) brings this action in the interests of the
2 general public and on information and belief, hereby alleges:

3 **INTRODUCTION**

4 1. According to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
5 Safety Code, section 25249.5 *et seq.* (also known as, and referred to hereafter as, “Proposition 65”),
6 businesses must provide persons with a “clear and reasonable warning” before exposing them to
7 chemicals known to the state to cause cancer or reproductive toxicity.

8 2. This action is brought against the following entities:

- 9 a. THCclear
- 10 b. Caviar Gold
- 11 c. Nameless Genetics
- 12 d. LOL Edibles
- 13 e. Kurvana
- 14 f. Spliffin
- 15 g. Absolute Extracts
- 16 h. Dixie Elixers and Edibles
- 17 i. Bloom
- 18 j. FlavRx
- 19 k. The Clear
- 20 l. Pure Vape
- 21 m. Delta 9
- 22 n. Marley Naturals
- 23 o. Heavy Hitters
- 24 p. Buddha’s Best
- 25 q. Open Vape
- 26 r. KIVA Confections

27 3. Collectively, these entities will be referred to as the Defendants.

28 4. The Defendants manufacture, package, distribute, market, and/or sell in California
29 medical marijuana products that consumers purchase and ingest. By ingesting the products
30 manufactured by the Defendants, consumers are exposed to chemicals known to the state to cause cancer
31 or reproductive toxicity. Because the Defendants’ products contain such chemicals, they are required to
32 provide a “clear and reasonable” warning under Proposition 65. Here, the Defendants exposed

1 consumers to actionable chemicals but have failed to provide the health hazard warnings required under
2 Proposition 65.

3 5. This action seeks to remedy the continuing failure of the Defendants to warn consumers
4 in California they are being exposed to chemicals known in the State of California to cause cancer or
5 reproductive toxicity.

6 6. The Defendants' continuing manufacturing, packaging, distributing, marketing and/or
7 sales of products containing actionable chemicals without the required health hazard warnings causes or
8 threatens to cause, individuals to be involuntarily, unknowingly, and unwittingly exposed to actionable
9 chemicals in violation of Proposition 65, and subjects the Defendants to injunctive relief for such
10 conduct as well as civil penalties for each violation. (H&S Code § 25249.7(a) & (b)(1).)

11 **PARTIES**

12 7. The Plaintiff is a limited liability company organized under California law. The Plaintiff
13 is dedicated to, among other causes, providing information to consumers regarding the hazards of toxins
14 in marijuana products and enforcing state and federal environmental laws and regulations through
15 citizen suits.

16 8. The Plaintiff is a person within the meaning of Health and Safety Code, section 25249.11
17 and brings this enforcement action in the public interest pursuant to Health and Safety Code, section
18 25249.7, subdivision (d). Health and Safety Code, section 25249.7, subdivision (d) specifies a person
19 may bring an action to enforce Proposition 65 in the public interest, provided certain notice requirements
20 are satisfied and that no other public prosecutor is diligently prosecuting an action for the same
21 violation(s).

22 9. Each of the Defendants is now, and was at all times relevant herein, an entity doing
23 business in California within the meaning of Health and Safety Code, section 25249.11.

24 10. The Defendants own, administer, direct, control, and/or operate facilities and/or agents,
25 distributors, sellers, marketers, or other retail operations who place its products into the stream of
26 commerce in California (including but not limited to Alameda County) which contain chemicals
27 actionable under Proposition 65 without first giving clear and reasonable warnings.

28 11. The Defendants, separately and each of them, are or were, at all times relevant to the
29 claims in this Complaint and continuing through the present, legally responsible for compliance with the
30 provisions of Proposition 65. Whenever an allegation regarding any act of a Defendant is made herein,
31 such allegation shall be deemed to mean that Defendant, or its agents, officers, directors, managers,
32 supervisors, or employees did or so authorized such acts while engaged in the affairs of Defendant's

1 business operations and/or while acting within the course and scope of their employment or while
2 conducting business for Defendants for a commercial purpose.

3 12. In this Complaint, when reference is made to any act of a Defendant, such allegation shall
4 mean that the owners, officers, directors, agents, employees, contractors, or representatives of Defendant
5 acted or authorized such actions, and/or negligently failed and omitted to act or adequately and properly
6 supervise, control, or direct its employees and agents while engaged in the management, direction,
7 operation, or control of the affairs of the business organizations.

8 **JURISDICTION AND VENUE**

9 13. Venue is proper in the San Francisco County Superior Court, pursuant to Code of Civil
10 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
11 one or more instances of wrongful conduct occurred, and continue to occur, in Alameda County, and
12 because a number of the Defendants conducted, and continue to conduct, business in this County with
13 respect to their products.

14 14. This Court has jurisdiction over this action pursuant to California Constitution Article VI,
15 section 10, which grants the Superior Court “original jurisdiction in all causes except those given by
16 statute to other trial courts.” The statute under which this action is brought does not specify any other
17 court with jurisdiction.

18 15. This Court has jurisdiction over the Defendants because they are business entities that do
19 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves of the California market, through the sale, marketing, and use of their products in California,
21 to render the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice.

23 16. Venue in this action is proper in the Alameda County Superior Court because the cause,
24 or part thereof, arises in the County of Alameda since the Defendants’ products are marketed, offered for
25 sale, sold, used, and/or consumed in this county.

26 **STATUTORY BACKGROUND**

27 17. The people of the State of California declared in Proposition 65 their right “[t]o be
28 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”
29 (Health & Saf. Code Div. 20, Ch. 6.6 Note [Section 1, subdivision (b) of Initiative Measure, Proposition
30 65].) To effect this goal, Proposition 65 requires that individuals be provided with a “clear and
31 reasonable warning” before being exposed to substances listed by the State of California as causing
32 cancer or reproductive toxicity. (Health & Saf. Code, § 25249.6.) Health and Safety Code, section

1 25249.6 states, in pertinent part, “[n]o person in the course of doing business shall knowingly and
2 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
3 toxicity without first giving clear and reasonable warning to such individual”

4 18. An exposure to a chemical in a consumer product is one “which results from a person’s
5 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or
6 any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 22, § 12601, subd.
7 (b).)

8 19. Proposition 65 provides that any “person who violates or threatens to violate” the statute
9 may be enjoined in a court of competent jurisdiction. (Health & Saf. Code, § 25249.7). Health and
10 Safety Code section 25603(c) states that “a person in the course of doing business . . . shall provide a
11 warning to any person to whom the product is sold or transferred unless the product is packaged or
12 labeled with a clear and reasonable warning.”

13 20. Pursuant to H&S Code section 25603.1:

14 The warning may be provided by using one or more of the following methods singly or
15 in combination:

16
17 (a) A warning that appears on a product's label or other labeling.

18
19 (b) Identification of the product at the retail outlet in a manner which provides a
20 warning. Identification may be through shelf labeling, signs, menus, or a combination
21 thereof.

22 (c) The warnings provided pursuant to subparagraphs (a) and (b) shall be prominently
23 placed upon a product's label or other labeling or displayed at the retail outlet with such
24 conspicuousness, as compared with other words, statements, designs, or devices in the
25 label, labeling or display as to render it likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use.

27 (d) A system of signs, public advertising identifying the system and toll-free information
28 services, or any other system that provides clear and reasonable warnings

29 21. Proposition 65 provides that any “person who violates or threatens to violate” the statute
30 may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7.) The phrase “threaten to
31 violate” is defined to mean creating “a condition in which there is a substantial probability that a
32 violation will occur” (*Id.*, § 25249.11, subd. (e).) Violators are liable for civil penalties of up to \$2,500

1 per day for each violation of the Act. (*Id.*, § 25249.7.)

2 **FACTUAL BACKGROUND**

3 22. The consumer exposures that are the subject of this Complaint result from consumer's
4 ingestion of the Defendants' products resulting in exposure to several chemicals that are known to the
5 State of California to cause cancer or reproductive toxicity.

6 23. Specifically, the following Defendants have violated (and continue to violate) section
7 25249.6 by exposing consumers within the State of California to chemicals in the following, listed
8 products:

- 9 a. **THClear – Vape Syringe** (tested positive for Myclobutanil, which was added to the list
10 of chemicals known by the state to cause reproductive toxicity on April 16, 1999);
- 11 b. **Caviar Gold – Cavi Cone Grape** (tested positive for Carbaryl, which was added to the
12 list of chemicals known by the state to cause cancer on February 5, 2010 and to the list of
13 chemicals known by the state to cause reproductive toxicity on August 7, 2009;
14 Malathion, which was added to the list of chemicals known by the state to cause cancer on
15 May 20, 2016; and Myclobutanil, which was added to the list of chemicals known by the
16 state to cause reproductive toxicity on April 16, 1999);
- 17 c. **Nameless Genetics – Nameless Genetics Vape Cartridge** (tested positive for
18 Myclobutanil, which was added to the list of chemicals known by the state to cause
19 reproductive toxicity on April 16, 1999);
- 20 d. **LOL Edibles – LOL Watermelon Sour Belts** (tested positive for Carbaryl, which was
21 added to the list of chemicals known by the state to cause cancer on February 5, 2010 and
22 to the list of chemicals known by the state to cause reproductive toxicity on August 7,
23 2009; and Myclobutanil, which was added to the list of chemicals known by the state to
24 cause reproductive toxicity on April 16, 1999);
- 25 e. **Kurvana – Kurvana Naturals Vape Cartridge** (tested positive for Myclobutanil, which
26 was added to the list of chemicals known by the state to cause reproductive toxicity on
27 April 16, 1999);
- 28 f. **Spliffin – Spliffin Jack Herer Vape Cartridge** (tested positive for Carbaryl, which was
29 added to the list of chemicals known by the state to cause cancer on February 5, 2010 and
30 to the list of chemicals known by the state to cause reproductive toxicity on August 7,
31 2009; Malathion, which was added to the list of chemicals known by the state to cause
32

1 cancer on May 20, 2016; and Myclobutanil, which was added to the list of chemicals
2 known by the state to cause reproductive toxicity on April 16, 1999;

- 3 g. **Absolute Extracts – Absolute Extracts Girl Scout Cookie** (tested positive for Carbaryl,
4 which was added to the list of chemicals known by the state to cause cancer on February
5 5, 2010 and to the list of chemicals known by the state to cause reproductive toxicity on
6 August 7, 2009; and Malathion, which was added to the list of chemicals known by the
7 state to cause cancer on May 20, 2016);
- 8 h. **Dixie Elixirs and Edibles – Dixie Elixirs Sparkling Blueberry** (tested positive for
9 Carbaryl, which was added to the list of chemicals known by the state to cause cancer on
10 February 5, 2010 and to the list of chemicals known by the state to cause reproductive
11 toxicity on August 7, 2009; Malathion, which was added to the list of chemicals known by
12 the state to cause cancer on May 20, 2016; and Myclobutanil, which was added to the list
13 of chemicals known by the state to cause reproductive toxicity on April 16, 1999);
- 14 i. **Bloom – Bloom Vape Cartridge Sativa** (tested positive for Myclobutanil, which was
15 added to the list of chemicals known by the state to cause reproductive toxicity on April
16 16, 1999);
- 17 j. **FlavRx – FlavRx Jack Herer Vape Cartridge** (tested positive for Myclobutanil, which
18 was added to the list of chemicals known by the state to cause reproductive toxicity on
19 April 16, 1999);
- 20 k. **The Clear – The Clear Lemon Haze Vape Cartridge** (tested positive for Myclobutanil,
21 which was added to the list of chemicals known by the state to cause reproductive toxicity
22 on April 16, 1999);
- 23 l. **Pure Vape – Pure Vape Hybrid Cali Kush Vape Cartridge** (tested positive for
24 Myclobutanil, which was added to the list of chemicals known by the state to cause
25 reproductive toxicity on April 16, 1999);
- 26 m. **Delta 9 – Delta 9 Vape Cartridge Strawberry** (tested positive for Myclobutanil, which
27 was added to the list of chemicals known by the state to cause reproductive toxicity on
28 April 16, 1999);
- 29 n. **Marley Naturals – Marley Naturals Black Indica** (tested positive for Myclobutanil,
30 which was added to the list of chemicals known by the state to cause reproductive toxicity
31 on April 16, 1999);
32

- 1 o. **Heavy Hitters – Heavy Hitters Vape Cartridge Jack Herer** (tested positive for
2 Myclobutanil, which was added to the list of chemicals known by the state to cause
3 reproductive toxicity on April 16, 1999);
- 4 p. **Buddha’s Best – Buddha’s Best Chocolate Lover’s Ecstasy** (tested positive for
5 Carbaryl, which was added to the list of chemicals known by the state to cause cancer on
6 February 5, 2010 and to the list of chemicals known by the state to cause reproductive
7 toxicity on August 7, 2009; and Myclobutanil, which was added to the list of chemicals
8 known by the state to cause reproductive toxicity on April 16, 1999);
- 9 q. **Open Vape – Open Vape Reserve Cartridge Sativa** (tested positive for Myclobutanil,
10 which was added to the list of chemicals known by the state to cause reproductive toxicity
11 on April 16, 1999);
- 12 r. **KIVA Confections – Kiva Blueberry Terra Bites** (tested positive for Carbaryl, which
13 was added to the list of chemicals known by the state to cause cancer on February 5, 2010
14 and to the list of chemicals known by the state to cause reproductive toxicity on August 7,
15 2009; Malathion, which was added to the list of chemicals known by the state to cause
16 cancer on May 20, 2016; and Myclobutanil, which was added to the list of chemicals
17 known by the state to cause reproductive toxicity on April 16, 1999);

18 24. At all times relevant to this action, the Defendants, have knowingly and intentionally
19 exposed the users, consumers, and/or handlers of the above products, which include the listed chemicals,
20 without first giving a clear and reasonable warning to such individuals.

21 25. The Defendants have manufactured, processed, marketed, distributed, offered to sell
22 and/or sold the above products for use and consumption by ingestion in California since at least July 1,
23 2015. The Defendants continue to distribute and sell their products in California without the requisite
24 warning information.

25 26. At all times relevant to this action, the Defendants, therefore, have knowingly and
26 intentionally exposed the users, consumers and/or patients to their products and the actionable chemicals
27 therein without first giving a clear and reasonable warning(s) to such individuals.

28 27. As a proximate result of acts by the Defendants, as persons in the course of doing
29 business within the meaning of Health and Safety Code, section 25249.11, individuals throughout the
30 State of California, including in the County of Alameda, have been exposed to the chemicals delineated
31 above without a clear and reasonable warnings on the Defendants’ products. The individuals subject to
32

1 the violative exposures include normal and foreseeable users, consumers and patients of the
2 Defendants', as well as all other persons exposed to the products.

3 28. On August 7, 2017, the Plaintiff served the Defendants and the appropriate public
4 enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code
5 Section 25249.6. (Proposition 65)" that provided the Defendants and the public enforcement agencies
6 with notice that the Defendants were in violation of Proposition 65 for failing to warn purchasers and
7 individuals using the Defendants' products that the use of the products exposed them to chemicals
8 known in the State of the California to cause cancer or reproductive toxicity. True and correct copies of
9 the 60-Day Notices are attached hereto as **Exhibits A to R**, which are hereby incorporated by reference,
10 and are available on the Attorney General's website located at <https://oag.ca.gov/prop65>.

11 29. The notice was issued pursuant to, and in compliance with, the requirements of Health
12 and Safety Code, section 25249.7, subdivision (d) and the statute's implementing regulations regarding
13 the notice of the violations to be given to certain public enforcement agencies and to the violator. The
14 notice alleged that the Defendants were in violation of Proposition 65 for failing to warn consumers,
15 users or patients that using their products would expose them to chemicals known to the State of
16 California to cause cancer or reproductive toxicity.

17 30. The notice included, *inter alia*, the following information: the name, address, and
18 telephone number of the noticing individual; the name of the alleged violators; the statute violated; the
19 approximate time period during which violations occurred; and descriptions of the violations including
20 the chemicals involved, the routes of toxic exposure; and the specific product or type of product causing
21 the violations.

22 31. The Defendants were provided copies of the notice and the document entitled "The Safe
23 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also
24 known as Appendix A to Title 27 of the California Code of Regulations, section 25903.

25 32. The California Attorney General was provided a copy of the notice and a Certificate of
26 Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case for
27 this action, and attaching factual information sufficient to establish a basis for the certificate, including
28 the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other
29 data reviewed by those persons, pursuant to Health and Safety Code, section 25249.7, subdivision (h)(2)
30 via online submission.

31 33. After expiration of the sixty (60) day notice period, the appropriate public enforcement
32 agencies have failed to commence and diligently prosecute a cause of action under Health and Safety

1 Code, section 25249.5, *et seq.* against the Defendants based on the allegations herein.

2 34. Based on information and belief, the Defendants sold the above-listed products
3 containing chemicals actionable under Proposition 65 without giving clear and reasonable warnings that
4 their products contained chemicals known to cause cancer or reproductive toxicity. The Defendants
5 have sold thousands, of units of products requiring such warnings to a Person¹ in the State of California
6 during each and every month from July 1, 2015 through the present, amounting to numerous violative
7 products sold in that period.

8 **Basis for Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
9 **the products described in the August 7, 2017 Prop. 65 Notice of Violation to Defendants**

10 35. The Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive,
11 as specifically set forth herein.

12 36. By committing the acts alleged in this Complaint, the Defendants at all times relevant to
13 this action, and continuing through the present, have violated Health and Safety Code, section 25249.6
14 by, in the course of doing business, knowingly and intentionally exposing individuals in California to
15 chemicals known in the State of California to cause cancer or reproductive toxicity without first giving
16 clear and reasonable warnings to such persons who use, consume, or handle the products, pursuant to
17 Health and Safety Code, sections 25249.6 and 25249.11, subdivision (f).

18 37. By committing the acts alleged in this Complaint, the Defendants have caused or threaten
19 to cause irreparable harm for which there is no plain, speedy, or adequate remedy at law. In the absence
20 of injunctive relief, the Defendants will continue to create a substantial risk of irreparable injury by
21 continuing to cause patients and consumers to be involuntarily and unwittingly exposed to chemicals
22 known by the state to cause cancer or reproductive toxicity through the foreseeable future.

23 38. By the above-described acts, the Defendants have violated Health and Safety Code,
24 section 25249.6 and are therefore subject to preliminary and permanent injunctions ordering the
25 Defendants to stop violating Proposition 65, to provide warnings to all present and future customers, and
26 possibly to provide warnings to the Defendants' past customers or patients who purchased or used their
27 products without receiving a clear and reasonable warning.

28 39. An action for injunctive relief under Proposition 65 is specifically authorized by Health
29 and Safety Code, section 25249.7, subdivision (a).

30 ¹ "PERSON" includes a natural person, firm, association, organization, partnership, business, trust,
31 corporation, public entity, joint venture, and any other incorporated or unincorporated association,
32 business or enterprise.

1 40. Continuing commission by the Defendants of the acts alleged above will irreparably harm
2 the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at
3 law.

4 41. In the absence of preliminary and then permanent injunctive relief, the Defendants will
5 continue to create a substantial risk of irreparable injury by continuing to cause consumers to be
6 involuntarily, unknowingly and unwittingly exposed to the listed chemicals through the use,
7 consumption and/or handling of their products.

8 **FIRST CAUSE OF ACTION**

9 **(Civil Penalties for Violations of Health and Safety Code, section 25249.5, et seq. Concerning the**
10 **Products Described in the August 7, 2017 Prop. 65 Notice of Violation)**

11 42. The Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive,
12 as if specifically set forth herein.

13 43. By committing the acts alleged in this Complaint, the Defendants at all times relevant to
14 this action, and continuing through the present, have violated H&S Code section 25249.6 by, in the
15 course of doing business, knowingly and intentionally exposing individuals in California to a chemical
16 known to the State of California to cause cancer or reproductive toxicity, without first giving clear and
17 reasonable warnings to such persons who use, consume or ingest the Defendants' products containing
18 the actionable chemicals listed above, pursuant to H&S Code sections 25249.6 and 25249.11,
19 subdivision (f).

20 44. By the above-described acts, the Defendants are liable, pursuant to Health and Safety
21 Code, section 25249.7, subdivision (b), for a civil penalty of up to \$2,500 per day per violation for each
22 unlawful exposure to the actionable chemicals in the Defendants' products, according to proof.

23 **PRAYER FOR RELIEF**

24 Wherefore, the Plaintiff prays for the following relief:

25 A. A preliminary and permanent injunction, pursuant to Health and Safety Code, section
26 25249.7, subdivision (b), enjoining the Defendants, their agents, employees, assigns, and all persons
27 acting in concert or participating with the Defendants, from manufacturing, distributing, marketing, or
28 selling the products subject to this complaint to consumers or patients in California without first
29 providing a "clear and reasonable warning" regarding exposure to the actionable chemical within the
30 meaning of Proposition 65 in the Defendants' products;

31 B. An injunctive order, pursuant to H&S Code section 25249.7(b) and California Code of
32 Regulations, title 27, sections 25603 and 25603.1, compelling the Defendants to provide "clear and

1 reasonable” warnings at the entrance to the Defendants’ facilities; on the Defendants’ website; inside the
2 Defendants’ membership agreement; on the labels of the Defendants’ products; at the point of sale;
3 inside display cases; at concerts and conventions that the Defendants participate in; and/or on receipts
4 for the Defendants’ products that are delivered to consumers. The warnings should indicate that the
5 Defendants’ products will expose the user, consumer or patient to chemicals known to the State of
6 California to cause cancer or reproductive toxicity;

7 C. An assessment of civil penalties pursuant to Health and Safety Code, section 25249.7,
8 subdivision (b), against the Defendants in the amount on \$2,500 per day for each violation of
9 Proposition 65, according to proof;

10 D. An award to the Plaintiff of its reasonable attorney’s fees and cost of suit pursuant to
11 California Code of Civil Procedure, sections 1032 *et seq.* and 1021.5, as the Plaintiff shall specify in
12 further applications to the Court; and

13 E. Such other and further relief the Court deems just and proper.
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17 Dated: August 6, 2018

Respectfully submitted,

Morrison Law Firm

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20 /s/ Mark Morrison_____

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