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County of Santa Clara
18CV328294
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5 Attorneys for Plaintiff
Safe Products for Californians, LLC
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

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11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV328294
LLC,)
12 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
13 vs.) **AND INJUNCTIVE RELIEF**
14) (Health & Safety Code § 25249.5, *et seq.*)
CULTAO L.L.C.; AMAZON.COM, INC.;)
15 DOES 1 THROUGH 150, inclusive;)
16 Defendants.)
17)
18)

19
20 Plaintiff, SAFE PRODUCTS FOR CALIFORNIANS, LLC (“Plaintiff”), alleges as
21 follows:

22 **SUMMARY**

23 1. This is a representative action brought by Plaintiff in the public interest of the
24 citizens of the State of California to enforce the public’s right to be informed of the health
25 hazards caused by exposures to lead and lead compounds, a toxic chemical found in and on the
26 products manufactured, distributed, and/or sold by Defendants, CULTAO L.L.C.;
27 AMAZON.COM, INC.; and DOES 1 THROUGH 150, inclusive (collectively “Defendants”),
28 as set forth below.

1 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
2 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
3 § 6300, *et seq.* (“OSHA”), who purchase, use, or handle Defendants’ products, about the risks
4 of exposure to lead and lead compounds present in and on the products manufactured,
5 distributed, and sold throughout the State of California. Individuals not covered by OSHA who
6 purchase, use, or handle Defendants’ products are referred to hereinafter as “Consumers.”

7 3. Detectable levels of lead and lead compounds are found in and on the powdered
8 dietary supplements that Defendants manufacture, distribute, and/or offer for sale to
9 Consumers throughout the State of California.

10 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
11 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”), “[n]o person in the course of
12 doing business shall knowingly and intentionally expose any individual to a chemical known to
13 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual ...” Health & Safety Code § 25249.6.

15 5. Pursuant to Proposition 65, on February 27, 1987, California identified and
16 listed lead and lead compounds as a chemical known to cause reproductive toxicity. Lead and
17 lead compounds became subject to the “clear and reasonable warning” requirements of
18 Proposition 65 one year later on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health
19 & Safety Code § 25249.8.

20 6. Pursuant to Proposition 65, on October 1, 1992, California identified and listed
21 lead and lead compounds as a chemical known to cause cancer. Lead and lead compounds
22 again became subject to the “clear and reasonable warning” requirements of Proposition 65 one
23 year later on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
24 § 25249.8.

25 7. Defendants manufacture, distribute, import, sell, and offer for sale without
26 health warnings in the State of California, powdered dietary supplements that contain excessive
27 levels of lead and lead compounds including, but not limited to, “Plant-Based Balance Meal –
28 Vanilla,” ASIN X000XQLFM9. All such products containing lead and lead compounds are

1 referred to collectively hereinafter as “Products.”

2 8. Defendants’ failure to warn Consumers in the State of California of the health
3 hazards associated with exposures to lead and lead compounds in conjunction with
4 Defendants’ sales of the Products are violations of Proposition 65, and subject Defendants, and
5 each of them, to enjoinder of such conduct as well as civil penalties for each violation. Health
6 & Safety Code § 25249.7(a) & (b)(1).

7 9. For Defendants’ violations of Proposition 65, Plaintiff seeks preliminary and
8 permanent injunctive relief to compel Defendants to provide Consumers of the Products with
9 the required warning regarding the health hazards associated with exposures to lead and lead
10 compounds. Health & Safety Code § 25249.7(a).

11 10. Pursuant to Health & Safety Code § 25249.7(b), Plaintiff also seeks civil
12 penalties against Defendants for their violations of Proposition 65.

13 **JURISDICTION AND VENUE**

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

18 12. The California Superior Court has jurisdiction over Defendants based on
19 Plaintiff’s information and good faith belief that Defendants are each a person, firm,
20 corporation, or association that is a citizen of the State of California, has sufficient minimum
21 contacts in the State of California, and/or purposefully avails itself of the California market.
22 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California
23 courts consistent with traditional notions of fair play and substantial justice.

24 13. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to
25 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
26 jurisdiction, because Plaintiff seeks civil penalties against Defendants, because one or more
27 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
28 Defendants conducted, and continue to conduct, business in Santa Clara County with respect to

1 the Products.

2 **PARTIES**

3 14. Plaintiff is a limited liability California company with its principal place of
4 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
5 eliminate the presence of hazardous substances in consumer products sold in California, and to
6 ensure that California consumers are aware of the presence of such substances in consumer
7 goods so that they can make an educated effort to limit their own exposure where deemed
8 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
9 § 25249.7(d).

10 15. Defendants CULTAO L.L.C. and AMAZON.COM, INC. are each persons in
11 the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and
12 25249.11.

13 16. Defendants manufacture, import, distribute, sell, and/or offer the Products for
14 sale or use in the State of California, or imply by their conduct that they manufacture, import,
15 distribute, sell, and/or offer the Products for sale or use in the State of California.

16 17. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer Defendants”),
17 are each a person in the course of doing business within the meaning of Health & Safety Code
18 §§ 25249.6 and 25249.11.

19 18. Manufacturer Defendants, and each of them, research, test, design, assemble,
20 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
21 assembles, fabricates, and manufactures, one or more of the Products offered for sale or use in
22 California.

23 19. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
24 are each a person in the course of doing business within the meaning of Health & Safety Code
25 §§ 25249.6 and 25249.11.

26 20. Distributor Defendants, and each of them, distribute, exchange, transfer,
27 process, and transport one or more of the Products to individuals, businesses, or retailers for
28 sale or use in the State of California, or each implies by its conduct that it distributes,

1 exchanges, transfers, processes, and transports one or more of the Products to individuals,
2 businesses, or retailers for sale or use in the State of California.

3 21. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
4 each a person in the course of doing business within the meaning of Health & Safety Code
5 §§ 25249.6 and 25249.11.

6 22. Retailer Defendants, and each of them, offer the Products for sale to individuals
7 in the State of California.

8 23. At this time, the true names of Defendants DOES 1 THROUGH 150, inclusive,
9 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names
10 pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis
11 alleges, that each of the fictitiously named defendants is responsible for the acts and
12 occurrences alleged herein. When ascertained, their true names shall be reflected in an
13 amended complaint.

14 **FIRST CAUSE OF ACTION**

15 **Violation of Proposition 65**

16 24. Plaintiff re-pleads and incorporates by reference the allegations contained in
17 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

18 25. Plaintiff is informed and believes, and on that basis alleges, that each of the
19 Defendants employs ten or more persons.

20 26. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
21 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
22 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
23 harm.”

24 27. Proposition 65 states, “[no] person in the course of doing business shall
25 knowingly and intentionally expose any individual to a chemical known to the state to cause
26 cancer or reproductive toxicity without first giving clear and reasonable warning to such
27 individual ...” Health & Safety Code § 25249.6.

28 28. On February 6, 2018, Plaintiff served a sixty-day notice of violation, including

1 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
2 least one person with relevant and appropriate expertise who reviewed relevant data regarding
3 the alleged exposures to lead and lead compounds and that counsel believed there was
4 meritorious and reasonable cause for a public action, on Defendants CULTAO L.L.C.,
5 AMAZON.COM, INC., the California Attorney General's Office, and the requisite public
6 enforcement agencies, alleging that, as a result of Defendants' sales of the Products,
7 Consumers in the State of California are being exposed to lead and lead compounds resulting
8 from their reasonably foreseeable use of the Products, without the Consumers first receiving a
9 "clear and reasonable warning" regarding the harms associated with exposures to lead and lead
10 compounds, as required by Proposition 65.

11 29. Defendants manufacture, import, distribute, sell, and offer the Products for sale
12 or use in violation of Health & Safety Code § 25249.6, and Defendants' violations have
13 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, Defendants'
14 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
15 future.

16 30. After receiving Plaintiff's sixty-day notice of violation, and to Plaintiff's best
17 information and belief, no public enforcement agency has commenced and diligently
18 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
19 violations that are the subject of Plaintiff's notice of violation.

20 31. The Products that Defendants manufacture, import, distribute, sell, and offer for
21 sale or use in California cause exposures to lead and lead compounds as a result of the
22 reasonably foreseeable use of the Products. Such exposures caused by Defendants and endured
23 by Consumers in California are not exempt from the "clear and reasonable" warning
24 requirements of Proposition 65, yet Defendants provide no clear and reasonable warning.

25 32. Defendants knew or should have known that the Products they manufacture,
26 import, distribute, sell, and offer for sale or use in California contain lead and lead compounds.

27 33. Lead and lead compounds are present in or on the Products in such a way as to
28 expose Consumers through ingestion and/or inhalation during reasonably foreseeable use.

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Products currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601, *et seq.*;

3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering the Products for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601, *et seq.*, regarding the harms associated with lead and lead compounds;
4. Plaintiff’s reasonable attorney’s fees and costs of suit; and
5. For such other and further relief as the Court deems proper.

Dated: 5-14-18

MISSION LAW FIRM A.P.C.

Tanya Moore
Tanya E. Moore
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Safe Products for Californians, LLC