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County of Santa Clara  
18CV335862  
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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**

10  
11 SAFE PRODUCTS FOR CALIFORNIANS, ) No. 18CV335862  
LLC, )  
12 Plaintiff, ) **COMPLAINT FOR CIVIL PENALTIES**  
13 vs. ) **AND INJUNCTIVE RELIEF**  
14 ) (Health & Safety Code § 25249.5, *et seq.*)  
15 WAL-MART STORES, INC.; LUCKY )  
VITAMIN, LLC; AMAZON.COM, INC.; )  
16 DOES 1 THROUGH 150 )  
17 Defendants. )  
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, toxic chemicals found in and on the  
26 products manufactured, distributed, and/or sold by Defendants, WAL-MART STORES, INC.;  
27 LUCKY VITAMIN, LLC; AMAZON.COM, INC., and DOES 1 THROUGH 150, inclusive  
28 (collectively “Defendants”), 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/or on the  
8 powdered 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 October 1, 1992, California identified and listed  
16 lead and lead compounds as a chemical known to cause cancer. Lead and lead compounds  
17 became subject to the "clear and reasonable warning" requirements of Proposition 65 one year  
18 later on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

19          6.       Pursuant to Proposition 65, on February 27, 1987, California identified and  
20 listed lead and lead compounds as a chemical known to cause reproductive toxicity. Lead and  
21 lead compounds became subject to the "clear and reasonable warning" requirements of  
22 Proposition 65 one year later on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health  
23 & Safety Code § 25249.8.

24          7.       Defendants manufacture, distribute, import, sell, and offer for sale without  
25 health warnings in the State of California, powdered dietary supplements that contain excessive  
26 levels of lead and lead compounds including, but not limited to, "Fusion Diet Natural Pea  
27 Protein – Strawberry Shortcake," UPC #865065003253; "Fusion Diet Natural Pea Protein –  
28 Double Chocolate Fudge," UPC #86558400309; and "Fusion Diet Natural Meal Replacement

1 Shake – Creamy Chocolate,” UPC #851295004286. All such products containing lead and lead  
2 compounds are referred to collectively hereinafter as “Products.”

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

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

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

14 **JURISDICTION AND VENUE**

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

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

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

1 Defendants conducted, and continue to conduct, business in Santa Clara County with respect to  
2 the Products.

3 **PARTIES**

4 14. Plaintiff is a limited liability California company with its principal place of  
5 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or  
6 eliminate the presence of hazardous substances in consumer products sold in California, and to  
7 ensure that California consumers are aware of the presence of such substances in consumer  
8 goods so that they can make an educated effort to limit their own exposure where deemed  
9 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code  
10 § 25249.7(d).

11 15. Defendants WAL-MART STORES, INC.; LUCKY VITAMIN, LLC; and  
12 AMAZON.COM, INC. are persons in the course of doing business within the meaning of  
13 Health & Safety Code §§ 25249.6 and 25249.11.

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

17 17. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer Defendants”),  
18 are each a person in the course of doing business within the meaning of Health & Safety Code  
19 §§ 25249.6 and 25249.11.

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

24 19. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),  
25 are each a person in the course of doing business within the meaning of Health & Safety Code  
26 §§ 25249.6 and 25249.11.

27 20. Distributor Defendants, and each of them, distribute, exchange, transfer,  
28 process, and transport one or more of the Products to individuals, businesses, or retailers for

1 sale or use in the State of California, or each implies by its conduct that it distributes,  
2 exchanges, transfers, processes, and transports one or more of the Products to individuals,  
3 businesses, or retailers for sale or use in the State of California.

4 21. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are  
5 each a person in the course of doing business within the meaning of Health & Safety Code  
6 §§ 25249.6 and 25249.11.

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

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

## 15 **FIRST CAUSE OF ACTION**

### 16 **Violation of Proposition 65**

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

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

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

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

1           28.     On June 1, 2018, Plaintiff served a sixty-day notice of violation, including the  
2 attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
3 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
4 the alleged exposures to lead and lead compounds and that counsel believed there was  
5 meritorious and reasonable cause for a public action, on Defendants WAL-MART STORES,  
6 INC.; LUCKY VITAMIN, LLC; AMAZON.COM, INC.; the California Attorney General's  
7 Office, and the requisite public enforcement agencies, alleging that, as a result of Defendants'  
8 sales of the Products, Consumers in the State of California are being exposed to lead and lead  
9 compounds resulting from their reasonably foreseeable use of the Products, without the  
10 Consumers first receiving a "clear and reasonable warning" regarding the harms associated  
11 with exposures to lead and lead compounds, as required by Proposition 65.

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

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

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

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

28           33.     Lead and lead compounds are present in or on the Products in such a way as to

1 expose Consumers through ingestion and/or inhalation during reasonably foreseeable use.

2 34. The normal and reasonably foreseeable use of the Products has caused, and  
3 continues to cause, consumer exposures to lead and lead compounds, as defined by title 27 of  
4 the California Code of Regulations, section 25602(b).

5 35. Defendants know that the normal and reasonably foreseeable use of the  
6 Products exposes individuals to lead and lead compounds through ingestion and/or inhalation.

7 36. Defendants intend that exposures to lead and lead compounds through the  
8 reasonably foreseeable use of the Products will occur by their deliberate, non-accidental  
9 participation in the manufacture, importation, distribution, sale, and offering of the Products  
10 for sale or use to Consumers in California.

11 37. Defendants failed to provide a “clear and reasonable warning” to those  
12 Consumers in California who have been, or will be, exposed to lead and lead compounds  
13 through ingestion and/or inhalation resulting from their use of the Products.

14 38. Contrary to the express policy and statutory prohibition of Proposition 65  
15 enacted directly by California voters, consumers exposed to lead and lead compounds through  
16 ingestion and/or inhalation as a result of their use of the Products that Defendants sold without  
17 a “clear and reasonable” health hazard warning have suffered, and continue to suffer,  
18 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

19 39. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-  
20 described acts, Defendants, and each of them, are liable for a maximum civil penalty of \$2,500  
21 per day for each violation.

22 40. As a consequence of the above-described acts, Health & Safety Code  
23 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
24 Defendants.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 27 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to  
28 Health & Safety Code § 25249.7(b);

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2. Preliminary and permanent injunctions mandating that Defendants recall all 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: October 2, 2018

MISSION LAW FIRM, A.P.C.

*Tanya Moore*

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