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ALAMEDA COUNTY

SEP 13 2018

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

ERIKA MCCARTNEY, in the public interest,

Plaintiff,

v.

AMAZON.COM, INC., and DOES 1 through  
500, inclusive,

Defendants.

Case No.

**RG18920463**

**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  
2 of counsel, except for information based on knowledge, hereby makes the following allegations.

### 3 **INTRODUCTION**

4 1. This Complaint seeks to remedy Defendant's continuing failure to adequately warn  
5 individuals in California that they are being exposed to Lead, a chemical known to the State of  
6 California to cause cancer, birth defects and other reproductive harm. Such exposures have  
7 occurred, and continue to occur, through the distribution, sale, and consumption of "Raw Food  
8 World Organic Black Gelatinized Maca Powder" (the "Product"). On information and belief, the  
9 Product is available to consumers via the internet through Defendant's website. Consumers are  
10 exposed to Lead when they consume the product.

11 2. Under California's Proposition 65, Health & Safety Code § 25249.6, *et seq.*, it is  
12 unlawful for businesses to knowingly and intentionally expose individuals in California to  
13 chemicals known to the State to cause cancer, birth defects or other reproductive harm without  
14 providing clear and reasonable warnings to individuals prior to their exposure. Defendant sells  
15 and distributes a product contaminated with significant quantities of Lead into the California  
16 marketplace, exposing consumers of the Product to Lead.

17 3. Despite the fact that Defendant exposes consumers to Lead, during the relevant  
18 period, Defendant provided no warning about the carcinogenetic and reproductive hazards  
19 associated with Lead exposure. Defendant's conduct thus violates the warning provision of  
20 Proposition 65, Health & Safety Code § 25249.5.

### 21 **PARTIES**

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

24 5. Defendant AMAZON.COM, INC. ("Defendant") is a person in the course of doing  
25 business within the meaning of Health & Safety Code § 25249.11. Defendant distributes and/or  
26 sells the Product for sale and use in California.

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

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

35. Defendant has failed to provide clear and reasonable warnings regarding the reproductive toxicity of Lead to users of the Product.

36. By committing the acts alleged above, Defendant has at times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Lead without first giving clear and reasonable warnings to such individuals regarding the reproductive toxicity and carcinogenetic hazards of Lead.

### **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 Defendant of up to \$2,500 per day for each violation of Proposition 65 occurring during 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 Product such that no Proposition 65 warnings are required or providing clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

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1 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27, 1988, one year after  
2 it was listed as a chemical known to cause reproductive toxicity, Lead became subject to the clear  
3 and reasonable warning requirement regarding reproductive toxicants under Proposition 65.

4 13. On October 1, 1992, the State of California officially listed Lead and Lead  
5 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
6 listed as chemicals known to cause cancer, Lead and Lead compounds became subject to the clear  
7 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §  
8 27001(c); Health & Safety Code § 25249.10(b).

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

21 15. Lead exposures for pregnant women are also of particular concern in light of  
22 evidence that even short-term Lead exposure *in utero* may have long-term harmful effects. Hu,  
23 H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
24 Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*,  
25 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*  
26 *Health Perspectives* 114:5, 2006. Increased Lead exposure during pregnancy has also been shown  
27 to cause increased risk of premature birth and increased blood pressure in both the mother during  
28 pregnancy and the child after birth. Vingh, *et al.*, “Blood Lead at Currently Acceptable Levels

1 May Cause Preterm Labour,” *Occupational Environmental Medicine*, 68:231-234, 2010; Zhang,  
2 *et al.*, “Association Between Prenatal Lead Exposure and Blood Pressure in Children,”  
3 *Environmental Health Perspectives*, 120:3, 2012; Wells, *et al.*, “Low-Level Lead Exposure and  
4 Elevations in 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 anticipate rate of intake or  
9 exposure for average users of the consumer product. 27 C.C.R. § 25821(c)(2).

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

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

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

20 20. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff  
21 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, the  
22 District Attorneys of every county in California, the City Attorneys of every California city with  
23 a population greater than 750,000 and to the named Defendant. In compliance with Health &  
24 Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following  
25 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period  
26 during which the violations occurred; (4) the specific descriptions of the violations, including (a)  
27 the routes of exposure to Lead from the product and (b) the specific type of Product sold and used  
28

1 in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that  
2 is the subject of the violation described in the Notice.

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

16 22. None of the public prosecutors with the authority to prosecute violations of  
17 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
18 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in  
19 Plaintiff's Notice.

20 23. Defendant both knows and intends that individuals will consume the Product, thus  
21 exposing them to Lead.

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

24 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health &  
25 Safety Code § 25249.8(a)] is occurring. No knowledge that the...exposure is unlawful is  
26 required.  
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1 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.* Final  
2 Statement of Reasons Revised (November 4, 1998) (pursuant to former 22 C.C.R. Division 2, §  
3 12201).

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

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

8 27. As an entity that distributes and/or sells the Product for use in the California  
9 marketplace, Defendant knows or should know that the Product contains Lead and that individuals  
10 who consume the Product will be exposed to Lead. The Lead exposures to consumers who  
11 consume the Product are a natural and foreseeable consequence of Defendant's placing the Product  
12 into the stream of commerce.

13 28. Nevertheless, Defendant continues to expose consumers to Lead without prior clear  
14 and reasonable warnings regarding the reproductive and carcinogenetic hazards of Lead.

15 29. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior  
16 to filing this Complaint.

17 30. Any person "violating or threatening to violate" Proposition 65 may be enjoined in  
18 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is  
19 defined to mean "to create a condition in which there is a substantial probability that a violation  
20 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not  
21 to exceed \$2,500 per day for each violation of Proposition 65.

## 22 **CAUSE OF ACTION**

### 23 **(Violations of the Health & Safety Code § 25249.6)**

24 31. Plaintiff restates and realleges paragraphs 1-30 as though fully set forth herein.

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

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




1           3.       That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to  
2 take action to stop ongoing unwarranted exposures to Lead resulting from use of the Product, as  
3 Plaintiff shall specify in further application to the Court;

4           4.       That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
5 applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and

6           5.       That the Court grant such other and further relief as may be just and proper.  
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8 Dated: September 12, 2018

PACIFIC JUSTICE CENTER

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11 By:   
12 Robert B. Hancock  
13 Attorneys for Plaintiff  
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