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Superior Court of CA,
County of Santa Clara
18CV335859
Reviewed By: E. Fang

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV335859
12 LLC,)
13 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
14 vs.) **AND INJUNCTIVE RELIEF**
15 AMAZON.COM, INC.; DOES 1 THROUGH) (Health & Safety Code § 25249.5, *et seq.*)
16 150)
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, AMAZON.COM, INC., and
27 DOES 1 THROUGH 150, inclusive (collectively "Defendants"), as set forth below.

28 2. By this Complaint, Plaintiff seeks to remedy Defendants' continuing failure to

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

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

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

14 5. Pursuant to Proposition 65, on October 1, 1992, California identified and listed
15 lead and lead compounds as a chemical known to cause cancer. Lead and lead compounds
16 became subject to the "clear and reasonable warning" requirements of Proposition 65 one year
17 later on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

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

23 7. Defendants manufacture, distribute, import, sell, and offer for sale without
24 health warnings in the State of California, powdered dietary supplements that contain excessive
25 levels of lead and lead compounds including, but not limited to, "Moringa Leaf Powder,"
26 ASIN #X000XJOLM7. All such products containing lead and lead compounds are referred to
27 collectively hereinafter as "Products."

28 8. Defendants' failure to warn Consumers in the State of California of the health

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

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

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

11 **JURISDICTION AND VENUE**

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

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

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

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PARTIES

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

15. Defendants AMAZON.COM, INC. are persons in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

Violation of Proposition 65

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

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

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

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

28. On June 21, 2018, Plaintiff served a sixty-day notice of violation, including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding

1 the alleged exposures to lead and lead compounds and that counsel believed there was
2 meritorious and reasonable cause for a public action, on Defendant AMAZON.COM, INC.; the
3 California Attorney General's Office, and the requisite public enforcement agencies, alleging
4 that, as a result of Defendants' sales of the Products, Consumers in the State of California are
5 being exposed to lead and lead compounds resulting from their reasonably foreseeable use of
6 the Products, without the Consumers first receiving a "clear and reasonable warning" regarding
7 the harms associated with exposures to lead and lead compounds, as required by Proposition
8 65.

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

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

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

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

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

27 34. The normal and reasonably foreseeable use of the Products has caused, and
28 continues to cause, consumer exposures to lead and lead compounds, as defined by title 27 of

1 the California Code of Regulations, section 25602(b).

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

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

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

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

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

19 40. As a consequence of the above-described acts, Health & Safety Code
20 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
21 Defendants.

22 **PRAYER FOR RELIEF**

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

- 24 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to
25 Health & Safety Code § 25249.7(b);
- 26 2. Preliminary and permanent injunctions mandating that Defendants recall all
27 Products currently in the chain of commerce in California without a “clear and
28 reasonable warning” as defined by California Code of Regulations title 27,

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