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

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11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV337744
LLC,)
12 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
13 vs.) **AND INJUNCTIVE RELIEF**
14) (Health & Safety Code § 25249.5, *et seq.*)
KULI KULI, INC.; SF MARKETS, LLC;)
15 DOES 1 THROUGH 150,)
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 cadmium and lead and lead compounds, toxic chemicals found
26 in and on the products manufactured, distributed, and/or sold by Defendants, KULI KULI,
27 INC.; SF MARKETS, LLC; and DOES 1 THROUGH 150, inclusive (collectively
28 “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 cadmium and lead and lead compounds present in and on the products
5 manufactured, distributed, and sold throughout the State of California. Individuals not covered
6 by OSHA who purchase, use, or handle Defendants' products are referred to hereinafter as
7 "Consumers."

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

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

16 5. Pursuant to Proposition 65, on October 1, 1987, California identified and listed
17 cadmium as a chemical known to cause cancer. Cadmium became subject to the "clear and
18 reasonable warning" requirements of Proposition 65 one year later on October 1, 1988. Cal.
19 Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

20 6. Pursuant to Proposition 65, on May 1, 1997, California identified and listed
21 cadmium as a chemical known to cause reproductive toxicity. Cadmium became subject to the
22 "clear and reasonable warning" requirements of Proposition 65 one year later on May 1, 1998.
23 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

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

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

6 9. Defendants manufacture, distribute, import, sell, and offer for sale without
7 health warnings in the State of California, powdered dietary supplements that contain excessive
8 levels of cadmium and lead and lead compounds including, but not limited to, “Organic
9 Moringa Greens & Protein - Natural Greens,” UPC# 850460005349; and “Organic Moringa
10 Greens & Protein - Vanilla,” UPC# 850460005332. All such products containing cadmium and
11 lead and lead compounds are referred to collectively hereinafter as “Products.”

12 10. Defendants’ failure to warn Consumers in the State of California of the health
13 hazards associated with exposures to cadmium and lead and lead compounds in conjunction
14 with Defendants’ sales of the Products are violations of Proposition 65, and subject
15 Defendants, and each of them, to enjoinder of such conduct as well as civil penalties for each
16 violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

23 JURISDICTION AND VENUE

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

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1 19. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer Defendants”),
2 are each a person in the course of doing business within the meaning of Health & Safety Code
3 §§ 25249.6 and 25249.11.

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

8 21. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
9 are each a person in the course of doing business within the meaning of Health & Safety Code
10 §§ 25249.6 and 25249.11.

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

16 23. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
17 each a person in the course of doing business within the meaning of Health & Safety Code
18 §§ 25249.6 and 25249.11.

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Violation of Proposition 65**

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

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

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

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

15 30. On or about June 28, 2018, Plaintiff served a sixty-day notice of violation,
16 including the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had
17 consulted with at least one person with relevant and appropriate expertise who reviewed
18 relevant data regarding the alleged exposures to cadmium and lead and lead compounds and
19 that counsel believed there was meritorious and reasonable cause for a public action, on
20 Defendants KULI KULI, INC.; SF MARKETS, LLC; the California Attorney General’s
21 Office, and the requisite public enforcement agencies, alleging that, as a result of Defendants’
22 sales of the Products, Consumers in the State of California are being exposed to cadmium and
23 lead and lead compounds resulting from their reasonably foreseeable use of the Products,
24 without the Consumers first receiving a “clear and reasonable warning” regarding the harms
25 associated with exposures to cadmium and lead and lead compounds, as required by
26 Proposition 65.

27 31. Defendants manufacture, import, distribute, sell, and offer the Products for sale
28 or use in violation of Health & Safety Code § 25249.6, and Defendants’ violations have

1 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, Defendants'
2 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
3 future.

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

8 33. The Products that Defendants manufacture, import, distribute, sell, and offer for
9 sale or use in California cause exposures to cadmium and lead and lead compounds as a result
10 of the reasonably foreseeable use of the Products. Such exposures caused by Defendants and
11 endured by Consumers in California are not exempt from the "clear and reasonable" warning
12 requirements of Proposition 65, yet Defendants provide no clear and reasonable warning.

13 34. Defendants knew or should have known that the Products they manufacture,
14 import, distribute, sell, and offer for sale or use in California contain cadmium and lead and
15 lead compounds.

16 35. Cadmium and lead and lead compounds are present in or on the Products in
17 such a way as to expose Consumers through ingestion and/or inhalation during reasonably
18 foreseeable use.

19 36. The normal and reasonably foreseeable use of the Products has caused, and
20 continues to cause, consumer exposures to cadmium and lead and lead compounds, as defined
21 by title 27 of the California Code of Regulations, section 25602(b).

22 37. Defendants know that the normal and reasonably foreseeable use of the
23 Products exposes individuals to cadmium and lead and lead compounds through ingestion
24 and/or inhalation.

25 38. Defendants intend that exposures to cadmium and lead and lead compounds
26 through the reasonably foreseeable use of the Products will occur by their deliberate, non-
27 accidental participation in the manufacture, importation, distribution, sale, and offering of the
28 Products for sale or use to Consumers in California.

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

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

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

13 42. As a consequence of the above-described acts, Health & Safety Code
14 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
15 Defendants.

PRAYER FOR RELIEF

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

- 18 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to
19 Health & Safety Code § 25249.7(b);
- 20 2. Preliminary and permanent injunctions mandating that Defendants recall all
21 Products currently in the chain of commerce in California without a “clear and
22 reasonable warning” as defined by California Code of Regulations title 27,
23 section 25601, *et seq.*;
- 24 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily
25 and permanently enjoin Defendants from manufacturing, distributing, or
26 offering the Products for sale or use in California without first providing a
27 “clear and reasonable warning” in accordance with title 27 of the California
28 Code of Regulations, section 25601, *et seq.*, regarding the harms associated with

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cadmium and 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: November 1, 2018

MISSION LAW FIRM, A.P.C.

Tanya Moore

Tanya E. Moore
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Safe Products for Californians, LLC