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Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
18CV336011  
Reviewed By: V. Taylor

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

11 SAFE PRODUCTS FOR CALIFORNIANS, ) No. 18CV336011  
12 LLC, )  
13 Plaintiff, ) **COMPLAINT FOR CIVIL PENALTIES**  
14 vs. ) **AND INJUNCTIVE RELIEF**  
15 HEALTH MATTERS AMERICA, INC.; T.J. ) (Health & Safety Code § 25249.5, *et seq.*)  
16 MAXX OF CA, LLC; DOES 1 THROUGH )  
17 150 )  
18 Defendants. )  
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, HEALTH MATTERS  
27 AMERICA, INC.; T.J. MAXX OF CA, LLC, 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, "Organic Traditions – Maca  
27 for Men with Probiotics," UPC# 627733002721; and "Organic Traditions – Moringa Leaf  
28 Powder," UPC# 627733010603. 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 HEALTH MATTERS AMERICA, INC. and T.J. MAXX OF CA,  
11 LLC are persons in the course of doing business within the meaning of Health & Safety Code  
12 §§ 25249.6 and 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 June 27, 2018, Plaintiff served a sixty-day notice of violation, including the

1 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 HEALTH MATTERS  
5 AMERICA, INC.; T.J. MAXX OF CA, LLC; the California Attorney General's Office, and the  
6 requisite public enforcement agencies, alleging that, as a result of Defendants' sales of the  
7 Products, Consumers in the State of California are being exposed to lead and lead compounds  
8 resulting from their reasonably foreseeable use of the Products, without the Consumers first  
9 receiving a "clear and reasonable warning" regarding the harms associated with exposures to  
10 lead and lead 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: 10/4/18

MISSION LAW FIRM, A.P.C.

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