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

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11 SAFE PRODUCTS FOR CALIFORNIANS, ) No.18CV336424  
LLC, )  
12 Plaintiff, ) **COMPLAINT FOR CIVIL PENALTIES**  
13 vs. ) **AND INJUNCTIVE RELIEF**  
14 ZINT, LLC; AMAZON.COM, INC.; DOES 1 ) (Health & Safety Code § 25249.5, *et seq.*)  
THROUGH 150, )  
15 Defendants. )  
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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, ZINT, LLC;  
27 AMAZON.COM, INC.; and DOES 1 THROUGH 150, inclusive (collectively “Defendants”),  
28 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 corporation, or association that is a citizen of the State of California, has sufficient minimum  
2 contacts in the State of California, and/or purposefully avails itself of the California market.  
3 Defendants' purposeful availment renders the exercise of personal jurisdiction by California  
4 courts consistent with traditional notions of fair play and substantial justice.

5 15. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to  
6 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent  
7 jurisdiction, because Plaintiff seeks civil penalties against Defendants, because one or more  
8 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because  
9 Defendants conducted, and continue to conduct, business in Santa Clara County with respect to  
10 the Products.

### 11 PARTIES

12 16. Plaintiff is a limited liability California company with its principal place of  
13 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or  
14 eliminate the presence of hazardous substances in consumer products sold in California, and to  
15 ensure that California consumers are aware of the presence of such substances in consumer  
16 goods so that they can make an educated effort to limit their own exposure where deemed  
17 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code  
18 § 25249.7(d).

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

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

24 19. Defendants DOES 1 THROUGH 50, inclusive ("Manufacturer 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. Manufacturer Defendants, and each of them, research, test, design, assemble,  
28 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,

1 assembles, fabricates, and manufactures, one or more of the Products offered for sale or use in  
2 California.

3 21. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),  
4 are each a person in the course of doing business within the meaning of Health & Safety Code  
5 §§ 25249.6 and 25249.11.

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

11 23. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are  
12 each a person in the course of doing business within the meaning of Health & Safety Code  
13 §§ 25249.6 and 25249.11.

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

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

22 **FIRST CAUSE OF ACTION**

23 **Violation of Proposition 65**

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

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

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

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

9           30.     On June 27, 2018, Plaintiff served a sixty-day notice of violation, including the  
10 attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
11 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
12 the alleged exposures to cadmium and lead and lead compounds and that counsel believed  
13 there was meritorious and reasonable cause for a public action, on Defendants ZINT, LLC and  
14 AMAZON.COM, INC.; the California Attorney General’s Office, and the requisite public  
15 enforcement agencies, alleging that, as a result of Defendants’ sales of the Products,  
16 Consumers in the State of California are being exposed to cadmium and lead and lead  
17 compounds resulting from their reasonably foreseeable use of the Products, without the  
18 Consumers first receiving a “clear and reasonable warning” regarding the harms associated  
19 with exposures to cadmium and lead and lead compounds, as required by Proposition 65.

20           31.     Defendants manufacture, import, distribute, sell, and offer the Products for sale  
21 or use in violation of Health & Safety Code § 25249.6, and Defendants’ violations have  
22 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, Defendants’  
23 violations are ongoing and continuous in nature and, unless enjoined, will continue in the  
24 future.

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

1           33.     The Products that Defendants manufacture, import, distribute, sell, and offer for  
2 sale or use in California cause exposures to cadmium and lead and lead compounds as a result  
3 of the reasonably foreseeable use of the Products. Such exposures caused by Defendants and  
4 endured by Consumers in California are not exempt from the “clear and reasonable” warning  
5 requirements of Proposition 65, yet Defendants provide no clear and reasonable warning.

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

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

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

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

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

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

25          40.     Contrary to the express policy and statutory prohibition of Proposition 65  
26 enacted directly by California voters, consumers exposed to cadmium and lead and lead  
27 compounds through ingestion and/or inhalation as a result of their use of the Products that  
28 Defendants sold without a “clear and reasonable” health hazard warning have suffered, and

1 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy  
2 at law.

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

6 42. As a consequence of the above-described acts, Health & Safety Code  
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 Defendants.

9 **PRAYER FOR RELIEF**

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

- 11 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to  
12 Health & Safety Code § 25249.7(b);
- 13 2. Preliminary and permanent injunctions mandating that Defendants recall all  
14 Products currently in the chain of commerce in California without a “clear and  
15 reasonable warning” as defined by California Code of Regulations title 27,  
16 section 25601, *et seq.*;
- 17 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily  
18 and permanently enjoin Defendants from manufacturing, distributing, or  
19 offering the Products for sale or use in California without first providing a  
20 “clear and reasonable warning” in accordance with title 27 of the California  
21 Code of Regulations, section 25601, *et seq.*, regarding the harms associated with  
22 cadmium and lead and lead compounds;
- 23 4. Plaintiff’s reasonable attorney’s fees and costs of suit; and
- 24 5. For such other and further relief as the Court deems proper.

25 Dated: Oct 11, 2018

26 MISSION LAW FIRM, A.P.C.  
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28 Safe Products for Californians, LLC