

1 Tanya E. Moore, SBN 206683
MOORE LAW FIRM P.C.
2 332 North Second Street
San Jose, California 95112
3 Telephone (408) 298-2000
Facsimile (408) 298-6046
4 E-mail: service@mission.legal

5 Attorneys for Plaintiff
Safe Products for Californians, LLC
6
7

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

10
11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV338825
12 LLC,)
13 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
14 vs.) **AND INJUNCTIVE RELIEF**
15 ANCIENT BRANDS, LLC; SF MARKETS,) (Health & Safety Code § 25249.5, *et seq.*)
16 LLC; DOES 1 THROUGH 150, inclusive;)
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, a toxic chemical found in and on the
26 products manufactured, distributed, and/or sold by Defendants, ANCIENT BRANDS, LLC; SF
27 MARKETS, LLC; and DOES 1 THROUGH 150, inclusive (collectively “Defendants”), as set
28 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 on powdered
8 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 February 27, 1987, California identified and
16 listed lead and lead compounds as a chemical known to cause reproductive toxicity. Lead and
17 lead compounds became subject to the “clear and reasonable warning” requirements of
18 Proposition 65 one year later on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health
19 & Safety Code § 25249.8.

20 6. Pursuant to Proposition 65, on October 1, 1992, California identified and listed
21 lead and lead compounds as a chemical known to cause cancer. Lead and lead compounds
22 became subject to the “clear and reasonable warning” requirements of Proposition 65 one year
23 later on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c); Health & 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, “Keto Protein - Turmeric,”
27 UPC# 8-16401-02089-5. All such products containing lead and lead compounds are referred to
28 collectively hereinafter as “Products.”

PARTIES

1
2 14. Plaintiff is a limited liability California company with its principal place of
3 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
4 eliminate the presence of hazardous substances in consumer products sold in California, and to
5 ensure that California consumers are aware of the presence of such substances in consumer
6 goods so that they can make an educated effort to limit their own exposure where deemed
7 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
8 § 25249.7(d).

9 15. Defendants ANCIENT BRANDS, LLC and SF MARKETS, LLC are persons in
10 the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and
11 25249.11.

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

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

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

22 19. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
23 are each a person in the course of doing business within the meaning of Health & Safety Code
24 §§ 25249.6 and 25249.11.

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

1 businesses, or retailers for sale or use in the State of California.

2 21. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
3 each a person in the course of doing business within the meaning of Health & Safety Code
4 §§ 25249.6 and 25249.11.

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

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

13 **FIRST CAUSE OF ACTION**

14 **Violation of Proposition 65**

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

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

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

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

27 28. On or about July 23, 2018, Plaintiff served a sixty-day notice of violation,
28 including the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had

1 consulted with at least one person with relevant and appropriate expertise who reviewed
2 relevant data regarding the alleged exposures to lead and lead compounds and that counsel
3 believed there was meritorious and reasonable cause for a public action, on Defendants
4 ANCIENT BRANDS, LLC and SF MARKETS, LLC, the California Attorney General's
5 Office, and the requisite public enforcement agencies, alleging that, as a result of Defendant's
6 sales of the Products, Consumers in the State of California are being exposed to lead and lead
7 compounds resulting from their reasonably foreseeable use of the Products, without the
8 Consumers first receiving a "clear and reasonable warning" regarding the harms associated
9 with exposures to lead and lead compounds, as required by Proposition 65.

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

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

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

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

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

28 34. The normal and reasonably foreseeable use of the Products has caused, and

1 continues to cause, consumer exposures to lead and lead compounds, as defined by title 27 of
2 the California Code of Regulations, section 25602(b).

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

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

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

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

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

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

23 **PRAYER FOR RELIEF**

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

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

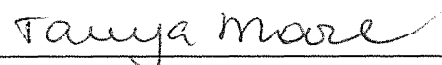
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: November 29, 2018

MOORE LAW FIRM, P.C.



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