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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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11	SAFE PRODUCTS FOR CALIFORNIANS,)	No. 18CV336908
12	LLC,)	
13	Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES
14	vs.)	AND INJUNCTIVE RELIEF
15)	(Health & Safety Code § 25249.5, <i>et seq.</i>)
16	COLSON HEALTH, INC.; BUY BUY)	
17	BABY, INC.; WALMART INC. dba WAL-)	
18	MART STORES, INC.; AMAZON.COM,)	
19	INC.; LUCKY VITAMIN, LLC; DOES 1)	
	THROUGH 150, inclusive;)	
	Defendants.)	

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21 Plaintiff, SAFE PRODUCTS FOR CALIFORNIANS, LLC ("Plaintiff"), alleges as
22 follows:

23 **SUMMARY**

24 1. This is a representative action brought by Plaintiff in the public interest of the
25 citizens of the State of California to enforce the public's right to be informed of the health
26 hazards caused by exposures to lead and lead compounds, a toxic chemical found in and on the
27 products manufactured, distributed, and/or sold by Defendants, COLSON HEALTH, INC.;
28 BUY BUY BABY, INC.; WALMART INC. dba WAL-MART STORES, INC.;

1 AMAZON.COM, INC.; LUCKY VITAMIN, LLC; and DOES 1 THROUGH 150, inclusive
2 (collectively “Defendants”), as set forth below.

3 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
4 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
5 § 6300, *et seq.* (“OSHA”), who purchase, use, or handle Defendants’ products, about the risks
6 of exposure to lead and lead compounds present in and on the products manufactured,
7 distributed, and sold throughout the State of California. Individuals not covered by OSHA who
8 purchase, use, or handle Defendants’ products are referred to hereinafter as “Consumers.”

9 3. Detectable levels of lead and lead compounds are found in and on lactation aids
10 that Defendants manufacture, distribute, and/or offer for sale to Consumers throughout the
11 State of California.

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

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

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

26 7. Defendants manufacture, distribute, import, sell, and offer for sale without
27 health warnings in the State of California, lactation aids that contain excessive levels of lead
28 and lead compounds including, but not limited to, “Boobie Bar – Oatmeal Chocolate Chip,”

UPC# 8-50975-00600-8 (Amazon ASIN# B015QSOH00); and “Boobie Bar – Blueberry Coconut,” UPC# 8-50975-00601-5 (Amazon ASIN# B015QH33C). All such products containing lead and lead compounds are referred to collectively hereinafter as “Products.”

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

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

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

JURISDICTION AND VENUE

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

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

13. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because Plaintiff seeks civil penalties against Defendants, because one or more

1 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
2 Defendants conducted, and continue to conduct, business in Santa Clara County with respect to
3 the Products.

4 PARTIES

5 14. Plaintiff is a limited liability California company with its principal place of
6 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
7 eliminate the presence of hazardous substances in consumer products sold in California, and to
8 ensure that California consumers are aware of the presence of such substances in consumer
9 goods so that they can make an educated effort to limit their own exposure where deemed
10 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
11 § 25249.7(d).

12 15. Defendants COLSON HEALTH, INC.; BUY BUY BABY, INC.; WALMART
13 INC. dba WAL-MART STORES, INC.; AMAZON.COM, INC.; and LUCKY VITAMIN,
14 LLC are persons in the course of doing business within the meaning of Health & Safety Code
15 §§ 25249.6 and 25249.11.

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

19 17. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer Defendants”),
20 are each a person in the course of doing business within the meaning of Health & Safety Code
21 §§ 25249.6 and 25249.11.

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

26 19. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
27 are each a person in the course of doing business within the meaning of Health & Safety Code
28 §§ 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

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual ...” Health & Safety Code § 25249.6.

3 28. On July 23, 2018, Plaintiff served a sixty-day notice of violation, including the
4 attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
5 least one person with relevant and appropriate expertise who reviewed relevant data regarding
6 the alleged exposures to lead and lead compounds and that counsel believed there was
7 meritorious and reasonable cause for a public action, on Defendants COLSON HEALTH,
8 INC.; BUY BUY BABY, INC.; WALMART INC. dba WAL-MART STORES, INC.;
9 AMAZON.COM, INC.; and LUCKY VITAMIN, LLC, the California Attorney General’s
10 Office, and the requisite public enforcement agencies, alleging that, as a result of Defendant’s
11 sales of the Products, Consumers in the State of California are being exposed to lead and lead
12 compounds resulting from their reasonably foreseeable use of the Products, without the
13 Consumers first receiving a “clear and reasonable warning” regarding the harms associated
14 with exposures to lead and lead compounds, as required by Proposition 65.

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

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

24 31. The Products that Defendants manufacture, import, distribute, sell, and offer for
25 sale or use in California cause exposures to lead and lead compounds as a result of the
26 reasonably foreseeable use of the Products. Such exposures caused by Defendants and endured
27 by Consumers in California are not exempt from the “clear and reasonable” warning
28 requirements of Proposition 65, yet Defendants provide no clear and reasonable warning.

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

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

5 34. The normal and reasonably foreseeable use of the Products has caused, and
6 continues to cause, consumer exposures to lead and lead compounds, as defined by title 27 of
7 the California Code of Regulations, section 25602(b).

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

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

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

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

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

25 40. As a consequence of the above-described acts, Health & Safety Code
26 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 Defendants.

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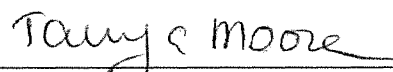
1 **PRAYER FOR RELIEF**

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

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

17 Dated: October 23, 2018

MISSION LAW FIRM A.P.C.

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21 Attorney for Plaintiff
22 Safe Products for Californians, LLC
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