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Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV343825
Reviewed By: Y. Chavez
2516369

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

10
11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 19CV343825
LLC,)
12 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
13 vs.) **AND INJUNCTIVE RELIEF**
14) (Health & Safety Code § 25249.5, *et seq.*)
TNT PRO SERIES LLC.; AMAZON.COM,)
15 INC.; 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, TNT PRO
27 SERIES LLC; AMAZON.COM, INC.; 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 lactation aid supplements that Defendants manufacture, distribute, and/or offer for sale
10 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, lactation aid supplements that contain excessive
8 levels of cadmium and/or lead and lead compounds including, but not limited to, “Mommy
9 Knows Best Lactation Fruit Drink Mix - Blueberry Pomegranate,” UPC # 7-39615-32975-5,
10 Amazon ASIN# B074WBS8WP; and “Mommy Knows Best Lactation Cookie Mix - Oatmeal
11 Chocolate Chip,” UPC # 7-39615-32908-3, Amazon ASIN# B01D5F5DM6. All such products
12 containing cadmium and/or lead and lead compounds are referred to collectively hereinafter as
13 “Products.”

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

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

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

25 **JURISDICTION AND VENUE**

26 13. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, section 10, which grants the Superior Court “original
28 jurisdiction in all cases except those given by statute to other trial courts.” The statute under

1 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

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

14 **PARTIES**

15 16. Plaintiff is a limited liability California company with its principal place of
16 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
17 eliminate the presence of hazardous substances in consumer products sold in California, and to
18 ensure that California consumers are aware of the presence of such substances in consumer
19 goods so that they can make an educated effort to limit their own exposure where deemed
20 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
21 § 25249.7(d).

22 17. Defendants TNT PRO SERIES LLC. and AMAZON.COM, INC. are persons in
23 the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and
24 25249.11.

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

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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 October 23, 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 TNT PRO SERIES LLC; AMAZON.COM, INC.; the California Attorney
21 General’s Office, and the requisite public enforcement agencies, alleging that, as a result of
22 Defendants’ sales of the Products, Consumers in the State of California are being exposed to
23 cadmium and lead and lead compounds resulting from their reasonably foreseeable use of the
24 Products, without the Consumers first receiving a “clear and reasonable warning” regarding the
25 harms 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.

16 **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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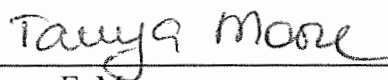
cadmium and lead and lead compounds;

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: February 13, 2019

MOORE LAW FIRM, P.C.



Tanya E. Moore
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Safe Products for Californians, LLC