

George Rikos, Esq. (SBN 204864)
LAW OFFICES OF GEORGE RIKOS
555 West Beech Street, Suite 500
San Diego, CA 92101
Telephone: (858) 342-9161
Facsimile: (858) 724-1453
Email: george@georgerikoslaw.com

Attorneys for Plaintiff,
Brad Van Patten

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County of San Diego
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Clerk of the Superior Court
By Shameka Simpson, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRAD VAN PATTEN, an individual

Plaintiff,

v.

BUSH BROTHERS & COMPANY, a
Tennessee corporation; AMAZON.COM,
INC.; a Delaware corporation; RALPHS
GROCERY COMPANY, a California
corporation; THE VONS COMPANIES, INC.,
a California corporation; and DOES 1 through
10, inclusive

Defendants.

Case No. 37-2020-00026752-CU-MC-CTL

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

Dept.: C-68
Judge: Richard S. Whitney

Plaintiff Brad Van Patten (“Plaintiff”) brings this action in the interests of the general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the continuing failure of defendants Bush Brothers & Company (“Bush”) Amazon.com, Inc., Ralphs Grocery Company, and The Vons Companies, Inc. to warn individuals in California that they are being exposed to the chemical Furan by their product, Bush’s Country Style baked beans (“Product”).

2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to

1 know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally
2 expose individuals in California to chemicals known to the State to cause cancer, birth defects, or
3 other reproductive harm without providing clear and reasonable warnings to individuals prior to
4 exposure.

5 3. When consumers purchase and eat the Product, they are exposed to Furan without a
6 “clear and reasonable warning” under Proposition 65. Yet Defendants have failed to provide any
7 warning to consumers that they are being exposed to the carcinogenic chemical Furan.

8 4. Defendants past and continued manufacturing, distribution, and sale of the Product
9 in California, without a clear and reasonable warning, causes individuals to be involuntarily and
10 unwittingly exposed to Furan in violation of Proposition 65.

11 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued
12 manufacturing, distribution, and/or sales of the Products in California without providing clear and
13 reasonable warnings regarding the risks of cancer posed by exposure to Furan through
14 consumption of the Products. Plaintiff seeks an injunctive order compelling Defendants to bring
15 their business practices into compliance with Proposition 65 by providing a clear and reasonable
16 warning to each individual who has been and who in the future may be exposed to Furan from
17 consumption of the Products. Plaintiff also seeks an order compelling Defendants to identify and
18 locate each individual person who in the past has purchased the Product, and to provide to each
19 such purchaser a clear and reasonable warning that use of the Product will cause exposures to
20 Furan.

21 **JURISDICTION AND VENUE**

22 6. This Court has jurisdiction over this action pursuant to Health and Safety Code §
23 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and
24 pursuant to California Constitution Article VII, Section 10, which grants the Superior Court
25 “original jurisdiction in all causes except those given by statute to other courts.” The causes of
26 actions alleged herein are not given by statute to other trial courts.

27 7. This Court has jurisdiction over Defendants because Defendants are each a
28 business having sufficient minimum contacts with California, or otherwise intentionally availing

1 themselves of the California market through the distribution and sale of the Products in the State
2 of California to render the exercise of jurisdiction over this defendant by the California courts
3 consistent with traditional notions of fair play and substantial justice.

4 8. Venue in this action is proper in the San Diego Superior Court because Defendant
5 has violated or threaten to violate California law in the County of San Diego.

6 **PARTIES**

7 9. Plaintiff Brad Van Patten is a resident of San Diego County California and working
8 to protect human health and the environment by curbing the use of harmful products, including
9 foods. Plaintiff is a person with the meaning of Health & Safety Code § 25118 and brings this
10 enforcement action in the public interest pursuant to Health & Safety Code § 25249.7(d).

11 10. Defendant Bush Brothers & Company is a corporation organized under the State of
12 Tennessee and is a person doing business with the meaning of Health & Safety Code § 25249.11.
13 Defendant Amazon.com, Inc. is a corporation organized under the State of Delaware and is a
14 person doing business with the meaning of Health & Safety Code § 25249.11. On information and
15 belief Defendant Ralphs Grocery Company is a corporation organized under the State of
16 California and is a person doing business with the meaning of Health & Safety Code § 25249.11.
17 On information and belief Defendant The Vons Companies, Inc. is a corporation organized under
18 the State of California and is a person doing business with the meaning of Health & Safety Code §
19 25249.11.

20 11. Defendants have manufactured, packaged, distributed, marketed and/or offered the
21 Product for sale or use in California and the County of San Diego. Plaintiff is informed and
22 believes, and thereupon alleges, that Defendants continue to manufacture, package, distribute,
23 market and/or sell the Products in California and in San Diego County.

24 **STATUTORY BACKGROUND**

25 12. The People of the State of California have declared in Proposition 65 their right
26 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
27 reproductive harm.” Section 1(b) of Initiative Measure, Proposition 65.

28 13. To effect this goal, Proposition 65 requires that individuals be provided with a

1 “clear and reasonable warning” before being exposed to substances listed by the State of
2 California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in
3 pertinent part:

4 No person in the course of doing business shall knowingly and intentionally
5 expose any individual to a chemical known to the state to cause cancer or
6 reproductive toxicity without first giving clear and reasonable warning to such
individual...

7 14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or
8 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
9 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs.
10 (“CCR”) §§ 25102(n).

11 15. Proposition 65 provides that any “person who violates or threatens to violate” the
12 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.
13 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a
14 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).
15 Violators are liable for visit penalties of up to \$2,500 per day for each violation of the Act. Health
16 & Safety Code § 25249.7.

17 16. On October 1, 1993, over 27 years ago, the State of California officially listed the
18 chemical Furan as a chemical known to cause cancer. Furan became subject to the warning
19 requirement one year later and was therefore subject to the “clear and reasonable” warning
20 requirements of Proposition 65 beginning on October 1, 1994. Health & Safety Code § 25249.6 *et*
21 *seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of Furan, there is no safe
22 harbor levels. 27 Cal. Code Regs. § 25705(b)(1). Any presence of Furan in the Product is a
23 violation of Proposition 65 and the related statutes.

24 **FACTUAL BACKGROUND**

25 17. To test Defendant’s Products for Furan, Plaintiff hired a well-
26 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of the
27 Products were positive for Furan and therefore in violation of the Proposition 65’s regulations.

28 18. Based on testing results, on September 10, 2020, Plaintiff sent an Amended 60-Day

1 Notice of Proposition 65 Violations (“Notice”) to defendants regarding the Product.¹

2 19. On the same day they were sent to Defendants, each Notice was also sent to the
3 requisite public enforcement agencies.

4 20. The Notice described above was issued pursuant to, and in compliance with, the
5 requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing regulations
6 regarding the notice of the violations to be given to certain public enforcement agencies and to the
7 violators. The Notice included, *inter alia*, the following information: the name, address, and
8 telephone number of the noticing individuals; the name of the alleged violator; the statute violated;
9 the approximate time period during which violations occurred; and descriptions of the violations,
10 including the chemical involved, the routes of toxic exposure, and the specific product or type of
11 product causing the violations, and was issued as follows:

- 12 a. The relevant Defendants were provided a copy of the Notice by U.S. Mail.
- 13 b. The relevant Defendants were provided a copy of the document entitled “The
14 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
15 Summary,” which is also known as Appendix A to Title 27 of Cal. Code Regs §
16 25903.
- 17 c. The California Attorney General was provided a copy of the Notice via online
18 submission.
- 19 d. The California Attorney General was provided with a Certificate of Merit by
20 the attorney for the noticing party, stating that there is a reasonable and
21 meritorious case for this action, and attaching factual information sufficient to
22 establish a basis for the certificate, including the identity of the persons
23 consulted with and relied on by the certified, and the facts, studies, or other data
24 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 25 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
26 which the Product is offered for sale within California were provided with a
27

28 ¹ An original 60 Day Notice of violation was issued on May 6, 2020. The Amended Notice, in part, adds additional violators.

1 copy of the Notice pursuant to Health & Safety Code § 25249.7(d)(1).

2 21. At least 60-days have elapsed since Plaintiff sent the Notice to Defendants.
3 The appropriate public enforcement agencies have failed to commence and diligently prosecute a
4 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendant based on the
5 allegations herein.

6 22. On information and belief, the Products have been manufactured,
7 distributed, and/or sold by Defendants for consumption in California. On information and belief,
8 the Product continues to be distributed and sold in California without the requisite warning
9 information.

10 23. At all times relevant to this action, Defendants have knowingly and intentionally
11 exposed the users of the Products to Furan without first giving a clear and reasonable warning to
12 such individuals.

13 24. As a proximate result of acts of Defendants as persons in the course of doing
14 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
15 State of California, including the County of San Diego, have been exposed to Furan without a
16 clear and reasonable warning. The individuals subject to the illegal exposures include normal and
17 foreseeable users of the Products, as well as all other persons exposed to the Products.

18
19 **FIRST CAUSE OF ACTION**
20 **(Violations of Health and Safety Code § 25249.5, *et seq.*)**

21 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,
22 inclusive, as if specifically set forth herein.

23 26. Defendants are a person doing business within the meaning of Health & Safety
24 Code § 25249.11.

25 27. Furan is listed on the State of California as a chemical known to cause cancer.

26 28. Defendants have and continue to knowingly and intentionally expose individuals
27 who ingest the Products to the chemical Furan without first providing a clear and reasonable
28 warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).

