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CITIZENS OF CALIFORNIA SAFETY CORP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CITIZENS OF CALIFORNIA SAFETY
 CORP.,

Plaintiff,

v.

PURPLEROCK BIOSCHWARTZ OPCO,
 LLC, individually and doing business as
 BIOSCHWARTZ; and DOES 1-100

Defendants.

CASE NO.

**COMPLAINT FOR INJUNCTIVE
 RELIEF AND DAMAGES**

Health & Safety Code, § 25249.5, et seq.

Plaintiff Citizens of California Safety Corp. hereby makes the following allegations:

INTRODUCTION

1. This Complaint seeks to remedy Defendants' violation of Health & Safety Code, § 25249.5, et seq. by knowingly and intentionally exposing individuals in California to chemicals known to the State to cause cancer, birth defects, or other reproductive harm without providing clear and reasonable warnings to individuals prior to their exposure.

1 **JURISDICTION AND VENUE**

2 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution
3 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
4 those given by statute to other trial courts.

5 9. This Court has jurisdiction over this action pursuant to Health and Safety Code
6 section 25249.7, which allows enforcement of violations of Proposition 65 in any Court of
7 competent jurisdiction.

8 10. This Court has jurisdiction over Defendants named herein because Defendants
9 either are registered with the California Secretary of State, reside or are located in this State or
10 are foreign corporations authorized to do business in California, or who do sufficient business in
11 California, have sufficient minimum contacts with California, or otherwise intentionally avail
12 themselves of the markets within California through their manufacture, distribution, promotion,
13 marketing, or sale of their products within California to render the exercise of jurisdiction by the
14 California courts permissible under traditional notions of fair play and substantial justice.

15 11. Venue is proper in the County of Los Angeles because one or more of the
16 violations occurred in the County of Los Angeles.

17 **BACKGROUND FACTS**

18 12. In 1986, the People of the State of California approved an initiative to address
19 growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed
20 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm. The
21 Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code
22 sections 25249.5, et seq. (“Proposition 65”), helps to protect California’s drinking water sources
23 from contamination, to allow consumers to make informed choices about the products they buy,
24 and to enable persons to protect themselves from toxic chemicals as they see fit.

25 13. Proposition 65 requires the Governor of California to publish a list of chemicals
26 known to the state to cause cancer, birth defects, or other reproductive harm. Health & Safety
27 Code § 25249.8.
28

14. On February 27, 1987 the Governor of California added lead to the list of chemicals known to the State to cause developmental and reproductive toxicity, and on October 1, 1992, the Governor added lead to the list of chemicals known to the State to cause cancer. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of lead to the list of chemicals known to the State to cause cancer and reproductive toxicity, lead became fully subject to Proposition 65 warning requirements and discharge prohibitions. The statute may be enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7.

15. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial probability that a violation will occur." Health & Safety Code § 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. Health & Safety Code § 25249.7(b).

16. Defendants' Products contain sufficient quantities of lead such that consumers who ingest the Products are thereby exposed to lead.

17. As companies that manufacture, import, distribute, and/or sell the Products for use in California, Defendants knew or should have known the Products will expose individuals to lead.

18. Defendants' exposed individuals to lead without providing a clear and reasonable warning to the exposed persons prior to the time of exposure.

NOTICE

19. Plaintiff provided a 60-Day Notice of Violation more than 60 days prior to naming each Defendant in this lawsuit. Each notice included the following: (1) name and address of each violator, (2) the time period of the violation, (3) the specific description of the violation and the route of exposure, (4) the specific product sold in violation of Proposition 65, (5) and the name of the listed chemical subject to the 60-Day Notice of Violation.

1 20. Plaintiff sent a Certificate of Merit to the Defendants and to the California
2 Attorney General, County District Attorneys, and City Attorneys for each city containing a
3 population of at least 750,000 people. The attorney for Plaintiff attached to the Certificate of
4 Merit served on the Attorney General the confidential factual information sufficient to establish
5 the basis of the Certificate of Merit.

6 21. Plaintiff's notice of alleged violation included a Certificate of Service and a
7 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65)
8 A Summary."

9 22. Plaintiff is informed, believes, and thereon alleges that none of the public
10 prosecutors with authority to prosecute violations of Proposition 65 has commenced and is
11 diligently prosecuting an action against the Defendants.

12 **FIRST CAUSE OF ACTION**

13 **(Against all Defendants for Violations of Proposition 65**
14 **(Health & Safety Code, §§ 25249.5, et seq.))**

15 23. Plaintiff repeats and incorporates by reference paragraphs 1 through 22 set forth
16 herein, inclusive.

17 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of a supplement, Turmeric Curcumin Sleep Aid with Melatonin.

19 25. Plaintiff is informed, believes, and thereon alleges that Turmeric Curcumin Sleep
20 Aid with Melatonin contains lead and Defendants knew or should have known is a chemical
21 listed by the State of California as known to cause cancer and subject to Proposition 65 warning
22 requirements.

23 26. For each Product, Defendant knew the average use of the Product will expose
24 users to lead. The exposure to lead was based on a normal and foreseeable consumption and use
25 of the Product.

26 27. Defendants have failed to provide clear and reasonable warnings regarding the
27 exposure of lead to users of its Products.
28

28. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to lead pursuant to Health and Safety Code section 25249.7(b).

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against the Defendants, and each of them as follows:

1. A permanent injunction enjoining Defendants from offering products for sale in California without providing clear and reasonable warnings pursuant to Health & Safety Code § 25249.7(a);
2. Penalties pursuant to Health and Safety Code section 25249.7(b);
3. Reasonable attorney fees and costs;
4. Any other relief the Court deems proper.

Dated: May 3, 2021

BROWN BEAR LAW, APC

By:

Shant L. Vayvayan, Esq.
Attorneys for Plaintiff,
Citizens of California Safety Corp.