

1 George Rikos, Esq. (SBN 204864)
2 **LAW OFFICES OF GEORGE RIKOS**
3 555 West Beech Street, Suite 500
4 San Diego, CA 92101
5 Telephone: (858) 342-9161
6 Facsimile: (858) 724-1453
7 Email: george@georgerikoslaw.com

8 Attorneys for Plaintiff,
9 Brad Van Patten

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRAD VAN PATTEN, an individual

Plaintiff,

v.

WATKINS Incorporated, a Delaware corporation; TARGET Corporation, a Delaware Corporation; and DOES 1 through 10, inclusive

Defendants.

Case No. 37-2021-00035161-CU-MC-CTL

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

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 Goya Foods, Inc. and Amazon.com, Inc. to warn individuals in California that they are being exposed to the chemical Pulegone by their product, the Watkins Pure Peppermint Extract (“Product”).

2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally expose 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

1 consistent with traditional notions of fair play and substantial justice.

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

4 **PARTIES**

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

9 10. Defendant Watkins Incorporated is a corporation organized under the State of
10 Delaware and is a person doing business with the meaning of Health & Safety Code § 25249.11.
11 Defendant Target Corporation is a corporation organized under the State of Delaware and is a
12 person doing business with the meaning of Health & Safety Code § 25249.11.

13 11. Defendants have manufactured, packaged, distributed, marketed and/or offered the
14 Product for sale or use in California and the County of San Diego. Plaintiff is informed and
15 believes, and thereupon alleges, that Defendant continues to manufacture, package, distribute,
16 market and/or sell the Products in California and in San Diego County.

17 **STATUTORY BACKGROUND**

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

21 13. To implement this goal, Proposition 65 requires that individuals be provided with a
22 “clear and reasonable warning” before being exposed to substances listed by the State of
23 California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in
24 pertinent part:

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

28 14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or

1 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
2 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs.
3 (“CCR”) §§ 25102(n).

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

10 16. On April 18, 2014, the State of California officially listed the chemical Pulegone as
11 a chemical known to cause cancer. Pulegone became subject to the warning requirement one year
12 later and was therefore subject to the “clear and reasonable” warning requirements of Proposition
13 65 beginning on April 18, 2015. Health & Safety Code § 25249.6 *et seq.*; 27 Cal. Code Regs. §§
14 25000, *et seq.*

15 **FACTUAL BACKGROUND**

16 17. To test Defendant’s Products for Pulegone, Plaintiff hired a well-
17 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of the
18 Products show that they were in violation for Pulegone which has no “safe harbor” limits.

19 18. Based on testing results, on March 17, 2021, Plaintiff sent a 60-Day Notice of
20 Proposition 65 Violations (“Notice”) to defendant regarding the Product.

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

23 20. Each of the Notices described above were issued pursuant to, and in compliance
24 with, the requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing
25 regulations regarding the notice of the violations to be given to certain public enforcement
26 agencies and to the violators. Each of the Notices included, *inter alia*, the following information:
27 the name, address, and telephone number of the noticing individuals; the name of the alleged
28 violator; the statute violated; the approximate time period during which violations occurred; and

1 descriptions of the violations, including the chemical involved, the routes of toxic exposure, and
2 the specific product or type of product causing the violations, and was issued as follows:

- 3 a. The relevant Defendant was provided a copy of the Notice by U.S. Mail.
- 4 b. The relevant Defendant was provided a copy of the document entitled “The
5 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
6 Summary,” which is also known as Appendix A to Title 27 of Cal. Code Regs §
7 25903.
- 8 c. The California Attorney General was provided a copy of the Notice via online
9 submission.
- 10 d. The California Attorney General was provided with a Certificate of Merit by
11 the attorney for the noticing party, stating that there is a reasonable and
12 meritorious case for this action, and attaching factual information sufficient to
13 establish a basis for the certificate, including the identity of the persons
14 consulted with and relied on by the certified, and the facts, studies, or other data
15 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 16 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
17 which the Products are offered for sale within California were provided with a
18 copy of the Notice pursuant to Health & Safety Code § 25249.7(d)(1).

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

23 22. On information and belief, the Products have been manufactured,
24 distributed, and/or sold by Defendants for consumption in California. On information and belief,
25 the Product continues to be distributed and sold in California without the requisite warning
26 information.

27 23. At all times relevant to this action, Defendants have knowingly and intentionally
28 exposed the users of the Products to Pulegone without first giving a clear and reasonable warning

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PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

1. A preliminary and permanent injunction, pursuant to Health & Safety Code § 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from distributing or selling the Products in California without first providing a clear and reasonable warning that consumers of the Products are exposed to Pulegone;
2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling Defendants to identify and locate each individual who has purchased the Product and to provide a warning to such persons that consumption of the Product will expose the consumers to a chemical known to cause cancer.
3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b) against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;
4. An award to Plaintiff of its reasonable attorney’s fees and costs of suit pursuant to California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the Court; and,
5. Such other and further relief as may be just and proper.

DATED: August 17, 2021

LAW OFFICES OF GEORGE RIKOS



George Rikos
Attorney for Plaintiff
Brad Van Patten