1 2 3 4 5 6	George Rikos, Esq. (SBN 204864) <b>LAW OFFICES OF GEORGE RIKOS</b> 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	ELECTRONICALLY FILED Superior Court of California, County of San Diego 08/17/2021 at 03:43:16 PM Clerk of the Superior Court By Emily Schilawski,Deputy Clerk		
7 8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	COUNTY OF SAN DIEGO			
10				
11	BRAD VAN PATTEN, an individual	Case No. 37-2021-00035161-CU-MC-CTL		
12	Plaintiff,	COMPLAINT FOR INJUNCTIVE		
13	V.	RELIEF AND CIVIL PENALTIES		
14	WATKINS Incorporated, a Delaware corporation; TARGET Corporation, a			
15	Delaware Corporation; and DOES 1 through 10, inclusive			
16	Defendants.			
17				
18 19				
20	Plaintiff Brad Van Patten ("Plaintiff") brings this action in the interests of the general public			
21	and, on information and belief, hereby alleges:			
22		DUCTION		
23		continuing failure of defendants Goya Foods, Inc.		
24	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").			
25				
26	2. California's Proposition 65 (Health & Safety Code § 25249.5, <i>et seq.</i> ), is a right to know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally			
27	expose individuals in California to chemicals known to the State to cause cancer, birth defects, or			
28	other reproductive harm without providing clear and reasonable warnings to individuals prior to			
	l COMPLAINT			

1 || exposure.

3. When consumers eat the Products, they are exposed to Pulegone at
levels requiring a "clear and reasonable warning" under Proposition 65. Despite this fact,
Defendants have failed to provide any warning to consumers that they are being exposed to the
carcinogenic chemical Pulegone.

6 4. Defendants' past and continued manufacturing, distribution, and sale of the Product
7 in California, without a clear and reasonable warning, causes individuals to be involuntarily and
8 unwittingly exposed to Pulegone at levels that violate Proposition 65.

9 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued 10 manufacturing, distribution, and/or sales of the Products in California without provision of clear 11 and reasonable warnings regarding the risks of cancer posed by exposure to Pulegone through 12 consumption of the Products. Plaintiff sees an injunctive order compelling Defendants to bring 13 their business practices into compliance with Proposition 65 by providing a clear and reasonable 14 warning to each individual who has been and who in the future may be exposed to Pulegone from 15 consumption of the Products. Plaintiff also seeks an order compelling Defendants to identify and 16 locate each individual person who in the past has purchased the Product, and to provide to each 17 such purchaser a clear and reasonable warning that use of the Product will cause exposures to 18 Pulegone.

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## JURISDICTION AND VENUE

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

7. This Court has jurisdiction over Defendants because Defendants are each a
business having sufficient minimum contacts with California, or otherwise intentionally availing
themselves of the California market through the distribution and sale of the Products in the State
of California to render the exercise of jurisdiction over this defendant by the California courts

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 26 27	No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or 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		
	3 COMPLAINT		

exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
 knowledge that the discharge, release or exposure is unlawful is required." 27 Cal. Code of Regs.
 ("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
a chemical known to cause cancer. Pulegone became subject to the warning requirement one year
later and was therefore subject to the "clear and reasonable" warning requirements of Proposition
65 beginning on April 18, 2015. Health & Safety Code § 25249.6 *et seq.*; 27 Cal. Code Regs. §§
25000, *et seq.*

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## FACTUAL BACKGROUND

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 the18 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 statue 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	с.	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. Or	n 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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to such individuals.

2 24. As a proximate result of acts of Defendants as persons in the course of doing 3 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the 4 State of California, including the County of San Diego, have been exposed to Pulegone without a 5 clear and reasonable warning. The individuals subject to the illegal exposures include normal and 6 foreseeable users of the Products, as well as all other persons exposed to the Products. 7 **FIRST CAUSE OF ACTION** 8 (Violations of Health and Safety Code § 25249.5, et seq.) 9 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24, 10 inclusive, as if specifically set forth herein. 11 26. Defendants are each a person doing business within the meaning of Health & 12 Safety Code § 25249.11. 13 27. Pulegone is listed on the State of California as a chemical known to cause cancer. 14 28. Defendants have and continue to knowingly and intentionally expose individuals 15 who ingest the Products to the chemical Pulegone without first providing a clear and reasonable 16 warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f). 17 29. Continuing commission by Defendants of the acts alleged above will irreparably 18 harm the citizens of the State of California, for which harm they have no plain, speedy, or 19 adequate remedy at law. 20 /// 21 /// 22 / / / 23 '// 24 11 25 // 26 '// 27 // 28 6

COMPLAINT

1	PRAYER FOR RELIEF			
2	Wherefore, Plaintiff prays for the following relief:			
3	1. A preliminary and permanent injunction, pursuant to Health & Safety Code §			
4	25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in			
5	concert or participating with Defendants, from distributing or selling the Products in California			
6	without first providing a clear and reasonable warning that consumers of the Products are exposed			
7	to Pulegone;			
8	2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling			
9	Defendants to identify and locate each individual who has purchased the Product and to provide a			
10	warning to such persons that consumption of the Product will expose the consumers to a chemical			
11	known to cause cancer.			
12	3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)			
13	against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;			
14	4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to			
15	California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the			
16	Court; and,			
17	5. Such other and further relief as may be just and proper.			
18				
19	DATED: August 17, 2021 LAW OFFICES OF GEORGE RIKOS			
20	George Rikos			
21	George Rikos			
22	Attorney for Plaintiff Brad Van Patten			
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