

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Laralei Paras, State Bar No. 203319
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillslp.com

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/29/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CGC-22-601013

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

PLANT PEOPLE, PBC; VITAMIN SHOPPE
INDUSTRIES LLC; and DOES 1-30, inclusive,

Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act of
1986 (Health & Safety Code § 25249.5 *et*
seq.)

UNLIMITED CIVIL

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
2 cause of action against Defendants PLANT PEOPLE, PBC, VITAMIN SHOPPE INDUSTRIES
3 LLC, and DOES 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. This Complaint is a representative action brought by plaintiff Keep America Safe and
6 Beautiful (“**KASB**”) in the public interest of the citizens of the State of California to enforce the
7 People’s right to be informed of the health hazards caused by exposures to the heavy metal, Lead, a
8 toxic chemical found in the dietary supplements manufactured, imported, distributed, sold or offered
9 for sale by Defendants in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
12 (“**consumers**”) they are being exposed to substances known to the State of California to cause birth
13 defects or other reproductive harm through exposures to Lead, when they ingest Defendants’ dietary
14 supplements.

15 3. Detectable levels of Lead are found in the dietary supplements that Defendants
16 manufacture, import, sell or distribute for sale to individuals throughout California.

17 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
18 Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course
19 of doing business to knowingly and intentionally expose consumers in California to chemicals known
20 to the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear
21 and reasonable” health hazard warning to such individuals prior to purchase or use.

22 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and offer
23 for sale, in and into California dietary supplements (“**PRODUCTS**”) containing Lead, without
24 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to the
25 chemical, including, but not limited to, *ADVANCED immune power organic mushroom multiplex for*
26 *immune strength (60 Capsules), Lot# 21A008, Exp 01/2024, UPC 8 60003 82130 5*. Defendants’
27 conduct subjects them to civil penalties for each violation, enjoinder as well as preliminary and
28 permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

1 **PARTIES**

2 6. Plaintiff KASB is a non-profit corporation organized under the laws of California and
3 acting in the interest of the general public, dedicated to protecting the health of California citizens and
4 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
5 consumer products and to increasing public awareness of those chemicals through the promotion of
6 sound environmental practices and corporate responsibility. KASB is a person within the meaning of
7 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to
8 Health and Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
10 PLANT PEOPLE, PBC (“**PLANT PEOPLE**”) was and is a “person” “in the course of doing
11 business” with ten (10) or more employees, within the meanings of Health and Safety Code
12 §§ 25249.6 and 25249.11.

13 8. PLANT PEOPLE manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
15 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

16 9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
17 VITAMIN SHOPPE INDUSTRIES LLC (“**VITAMIN SHOPPE**”) was and is a “person” “in the
18 course of doing business” with ten (10) or more employees, within the meanings of Health and Safety
19 Code §§ 25249.6 and 25249.11.

20 10. VITAMIN SHOPPE distributes, sells, and/or offers the PRODUCTS for sale or use in
21 the State of California, or implies by its conduct that it manufactures, imports, distributes, sells,
22 and/or offers the PRODUCTS for sale or use in the State of California.

23 11. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
24 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
25 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
26 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
27 offered for sale or use in California.

28 ///

1 12. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
2 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
3 **DISTRIBUTOR DEFENDANTS**, and each of them, distribute, transfer, and transport, or each
4 impliedly does so by its conduct, one or more of the **PRODUCTS** to individuals, businesses, or
5 retailers for sale or use in the State of California

6 13. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
7 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
8 **RETAILER DEFENDANTS**, and each of them, by and through their conduct, offer the **PRODUCTS**
9 for sale to individuals in the State of California.

10 14. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
11 unknown to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant
12 to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each
13 of the fictitiously named Defendants is responsible in some manner for the acts and occurrences
14 alleged herein and the damages caused thereby. When ascertained, their true names and capacities
15 shall be reflected in an amended complaint.

16 15. At all times mentioned herein, **PLANT PEOPLE, VITAMIN SHOPPE,**
17 **MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER**
18 **DEFENDANTS** shall, hereinafter, where appropriate, be referred to collectively as the
19 “**DEFENDANTS.**”

JURISDICTION AND VENUE

20
21 16. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
22 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
23 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
24 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
25 other trial courts.” The statute under which this action is brought does not specify any other basis of
26 subject matter jurisdiction.

27 17. The California Superior Court has jurisdiction over **DEFENDANTS**, based on
28 plaintiff’s information and good faith belief **DEFENDANTS** are each a person, firm, corporation or

1 association that is a citizen of the State of California, does sufficient business in California, has
2 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
3 themselves of the California market through their manufacture, importation, distribution, promotion,
4 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders
5 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
6 play and substantial justice.

7 18. Venue is proper in the Superior Court for the County of San Francisco, pursuant to
8 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
9 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
10 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
11 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
12 respect to the PRODUCTS that are the subject of this action.

13 **REGULATORY BACKGROUND AND LAW**

14 19. In 1986, the people of the State of California approved an initiative addressing the
15 harms caused by hazardous chemicals and declared their right “[t]o be informed about exposures to
16 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed
17 General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

18 20. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
19 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o
20 person in the course of doing business shall knowingly and intentionally expose any individual to a
21 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
22 warning to such individual...”

23 21. Under the Act, a “person in the course of doing business” is defined as a business with
24 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
25 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.
26 Health & Safety Code § 25249.6.

27 22. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
28 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR

1 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s
2 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
3 27 C.C.R. § 25600(h).

4 23. Under Proposition 65, persons violating the statute may be enjoined in any court of
5 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
6 Health & Safety Code § 25249.7.

7 24. On February 27, 1987, pursuant to Proposition 65’s implementing regulations,
8 California identified and listed Lead as a chemical known to the State cause developmental toxicity,
9 male reproductive toxicity, and female reproductive toxicity. Lead became subject to the “clear and
10 reasonable warning” requirements one year later, on February 27, 1988. On October 1, 1992,
11 pursuant to Proposition 65’s implementing regulations, California identified and listed Lead as a
12 chemical known to the State cause cancer. Lead became subject to the “clear and reasonable warning”
13 requirements for cancer one year later, on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c);
14 Health & Safety Code §§ 25249.8, 25249.10(b).

15 STATEMENT OF FACTS

16 25. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

17 26. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,
18 and consulted with a person with relevant and appropriate knowledge and expertise, who, after
19 reviewing the collected data and analyzing the risk of exposure to DEHP, determined the
20 PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a
21 warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in
22 accordance with their reasonably foreseeable and intended usages.

23 27. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
24 there was a reasonable and meritorious case for this private action and included the factual
25 information supporting the certificate when it served the notice on the California Attorney General’s
26 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

27 28. Thereafter, on December 3, 2021, plaintiff served a 60-Day Notice of Violation
28 (“**Notice**”), together with the certificate of merit, on PLANT PEOPLE, VITAMIN SHOPPE, the

1 California Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a
2 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and
3 are, being exposed to Lead through their reasonably foreseeable use of the PRODUCTS as intended
4 without first receiving a “clear and reasonable warning,” as required by Proposition 65.

5 29. After receiving plaintiff’s Notice, no public enforcement agency has commenced and
6 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
7 the alleged violations that are the subject of the Notice.

8 **FIRST CAUSE OF ACTION**

9 **(Violation of Proposition 65 - Against All DEFENDANTS)**

10 30. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
11 set forth in Paragraphs 1 through 29, inclusive.

12 31. DEFENDANTS’ PRODUCTS contain Lead in concentrations requiring a clear and
13 reasonable warning under Proposition 65.

14 32. DEFENDANTS know or should know the PRODUCTS they manufacture, import,
15 distribute, sell, and offer for sale in California contain Lead. As a result of plaintiff’s Notice,
16 DEFENDANTS also have actual knowledge of the presence of Lead in the PRODUCTS.

17 33. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
18 sale in or into the State of California cause exposures to Lead through ingestion, the reasonably
19 foreseeable use of the PRODUCTS.

20 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
21 continues to cause, exposures to Lead.

22 35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
23 exposes individuals to Lead through ingestion.

24 36. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the
25 PRODUCTS to occur by their deliberate, non-accidental participation in the California marketplace.

26 37. DEFENDANTS purchase, manufacture, ship, sell or offer for sale PRODUCTS that
27 DEFENDANTS know or should know will be sold or offered for sale in California containing
28 concentrations of Lead requiring a “clear and reasonable” warning under Proposition 65.

1 38. DEFENDANTS ship or sell the PRODUCTS to customers in California or who ship,
2 sell, or offer for sale the PRODUCTS in or into the State of California.

3 39. The exposures to Lead, caused by DEFENDANTS and endured by consumers in
4 California, are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

5 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
6 and other individuals in California who have been, or who will be, exposed to Lead through ingestion
7 resulting from the use of the PRODUCTS as intended.

8 41. DEFENDANTS failed to transmit a “clear and reasonable warning” to customers
9 DEFENDANTS know or should know will sell or offer for sale in California PRODUCTS containing
10 concentrations of Lead requiring a “clear and reasonable” warning under Proposition 65.

11 42. DEFENDANTS failed to withdraw from the market in California PRODUCTS
12 containing concentrations of Lead requiring a “clear and reasonable” warning under Proposition 65.

13 43. DEFENDANTS failed to send instruction to their customers that offer the
14 PRODUCTS for sale in California to cease offering the PRODUCTS for sale.

15 44. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
16 and other individuals, exposed to Lead through ingestion as a result of their use of the PRODUCTS
17 that DEFENDANTS sold without a “clear and reasonable” health hazard warning, have suffered, and
18 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

19 45. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
20 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
21 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are
22 ongoing and continuous in nature and, unless enjoined, will continue in the future.

23 46. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
24 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
25 per day for each violation.

26 47. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
27 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

28 ///

1 **PRAYER FOR RELIEF**

2 Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,
3 as follows:

4 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
5 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
6 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
7 reasonable warning” to consumers addressing the harms associated with exposures to Lead;

8 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
9 and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain
10 of commerce in California that do not bear a clear and reasonable health hazard warning;

11 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the
12 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

13 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
14 herein; and

15 5. That the Court grant any further relief as it deems just and equitable.

16 Dated: July 29, 2022

Respectfully submitted,

SEVEN HILLS LLP

17
18
19 By: 

Laralei Paras

Attorneys for Plaintiff

Keep America Safe and Beautiful