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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

UNLIMITED CIVIL JURISDICTION

**KEEP AMERICA SAFE AND
BEAUTIFUL**

Plaintiff,

VS.

**THOMPSON BRANDS, LLC.,
AMAZON.COM, INC.,
WHOLE FOODS MARKET**

AND

DOES 1-25 INCLUSIVE

DEFENDANTS.

CASE NO.: 37-2023-00003238-CU-NP-CTL

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Keep America Safe and Beautiful, in the public interest of the citizens of the State of California, to enforce the people’s right to be informed of the dangers from exposures to Cadmium (hereafter “Listed

1 Chemicals”) toxic chemicals when using the “Adora Calcium Supplement Rich Dark Chocolate
2 500mg – 30 pieces” sold by DEFENDANTS in California.

3 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS` continuing failures
4 to warn California citizens about their exposure to the Listed Chemicals during the normal and
5 intended use of the “Adora Calcium Supplement Rich Dark Chocolate 500mg – 30 pieces”
6 (hereafter “PRODUCT(S)” that the DEFENDANT manufactured, distributed and sold, in the
7 State of California and PRODUCTS that DEFENDANTS continue to manufacture, distribute
8 and offer for sale in the State of California.

9 3. California citizens, including children, through the act of buying, acquiring or
10 utilizing the products, are exposed to the listed chemicals in homes, workplaces, and places
11 throughout California where these products are used.

12 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6 et seq. (Proposition 65), “No person in the course of
14 doing business shall knowingly and intentionally expose any individual to a chemical known to
15 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
16 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

17 5. California identified and listed Cadmium as a chemical known to cause cancer.
18 Cadmium became subject to the warning requirements of Proposition 65 for cancer beginning on
19 October 1, 1987 (*27 CCR § 27002; Cal. Health & Safety Code § 25249.6.*)

20 6. California identified and listed Cadmium as a chemical known to cause birth
21 defects. Cadmium became subject to the warning requirements of Proposition 65 for
22 reproductive harm beginning on May 1, 1997. (*27 CCR Sec. 27002; Cal. Health & Safety Code*
23 *Sec. 25249.6*)

24 7. DEFENDANTS` past and continuing failures to warn consumers and/or other
25 individuals in the State of California about their exposure to the LISTED CHEMICALS in
26 conjunction with defendant’s sale of the PRODUCT is a violation of Proposition 65 and subjects
27 DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such violation.
28

1 8. For DEFENDANTS` violations of Proposition 65, plaintiff seeks preliminary
2 injunctive and permanent injunctive relief to compel DEFENDANTS to provide purchasers or
3 users of the PRODUCTS with the required warning regarding the health hazards of the LISTED
4 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

5 9. Plaintiff also seeks civil penalties against DEFENDANTS for their violations of
6 Proposition 65, as provides for by California Health & Safety Code § 25249.7(b).

7 **PARTIES**

8 10. Plaintiff, Keep America Safe and Beautiful is a citizen of, and resident in the State
9 of California who is dedicated to protecting the health of California citizens through the
10 elimination and reduction of toxic exposures from consumer PRODUCTS, and brings this action
11 in the public interest pursuant to California Health & Safety Code § 25249.7.

12 11. Defendant Amazon.com, Inc. (“DEFENDANT(S)”) is a person doing business
13 within the meaning of California Health & Safety Code § 25249.11.

14 12. Defendant Thompson Brands, LLC (“DEFENDANT(S)”) is a person doing
15 business within the meaning of California Health & Safety Code § 25249.11.

16 13. Defendant Whole Foods Market (“DEFENDANT(S)”) is a person doing business
17 within the meaning of California Health & Safety Code § 25249.11.

18 14. Defendant manufactures, distributes, and/or offers the PRODUCT for sale or use
19 in the State of California or implies by its conduct that it manufactures, distributes and/or offers
20 the PRODUCT for sale or use in the State of California.

21 **VENUE AND JURISDICTION**

22 15. Venue is proper in the San Diego County Superior Court, pursuant to Code of
23 Civil Procedure § 394, 495, 395.5, because this Court is a court of competent jurisdiction,
24 because one or more instances of wrongful conduct occurred, and continues to occur, in the
25 County of San Diego and/or because DEFENDANTS conducted, and continue to conduct,
26 business in this County with respect to the PRODUCT.

27 16. The California Superior Court has jurisdiction over this action pursuant to
28 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 is brought does not specify any other basis of subject matter jurisdiction.

3 17. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that either are citizens of the State of California, have sufficient minimum contacts in
6 the State of California, or otherwise purposefully avail themselves of the California market.
7 DEFENDANTS` purposeful availment renders the exercise of personal jurisdiction by California
8 courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 – Against Defendant)**

11 18. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 16, inclusive.

13 19. The citizens of the State of California have expressly stated in the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
15 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
16 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

17 20. Proposition 65 states, “No person in the course of doing business shall knowingly
18 and intentionally expose any individual to a chemical known to the state to cause cancer or
19 productive toxicity without first giving clear and reasonable warning to such individual...
20 (*Id.*)”

21 21. On February 2, 2022 a sixty-day notice violation, together with the requisite
22 certificate of merit, was provided to DEFENDANTS, and various public enforcement agencies
23 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
24 the State of California were being exposed to the LISTED CHEMICAL resulting from the
25 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
26 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

27 22. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
28 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and

1 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
2 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
3 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
4 believes that such violations will continue to occur into the future.

5 23. After receipt of the claims asserted in the sixty-day notices of violation, the
6 appropriate public enforcement agencies have failed to commence and diligently prosecute a
7 cause of action against DEFENDANTS under Proposition 65.

8 24. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
9 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
10 limits.

11 25. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
12 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
13 CHEMICAL.

14 26. The PRODUCTS, through normal use exposes users to the LISTED CHEMICALS
15 in such a way as to expose individuals to the LISTED CHEMICALS through inhalation, dermal
16 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

17 27. The normal and reasonably foreseeable use of the PRODUCTS has caused and
18 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
19 by 27 CCR§ 25602(b).

20 28. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
21 the PRODUCTS would expose individuals to the LISTED CHEMICAL..

22 29. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
23 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
24 accidental participation in the manufacture, distribution and/or offer for sale or use of
25 PRODUCTS to individuals in the State of California.

26 30. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and/or other individuals in the State of California who were or who could become
28 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

1 31. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
2 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the
3 reasonably foreseeable use of the PRODUCTS, sold by DEFENDENTS without a “clear and
4 reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm
5 they have no plain, speedy or adequate remedy at law.

6 32. As a consequence of the above-described acts, DEFENDANTS are liable for a
7 maximum civil penal of \$2,500 per day for each violation pursuant to California Health & Safety
8 Code § 25249.7(b).

9 33. As a consequence of the above-described acts, California Health & Safety Code §
10 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 34. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
13 hereinafter.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

16 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
17 civil penalties against DEFENDANTS, in the amount of \$2,500 per day for each violation
18 alleged herein;

19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
22 warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to the
23 LISTED CHEMICAL;

24 3. That the Court grant plaintiff its reasonable attorneys’ fees and cost of suit; and,

25 4. That the Court grant such other and further relief as may be just and proper.

26 Respectfully Submitted,

27 Dated: January 23, 2023

Law Offices of Stephanie Sy

28 By: 

Stephanie Sy, Esq.
Attorney for Plaintiff

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