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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/23/2023
Clerk of the Court

BY: LAURA SIMMONS
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED CIVIL JURISDICTION

13 KEEP AMERICA SAFE AND BEAUTIFUL,

14 Plaintiff,

15 v.

16 MARKY'S GROUP, INC.; AMAZON.COM,
17 INC.; and DOES 1-30, inclusive,

18 Defendants.

Case No.

CGC-23-607238

**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 MARKY’S GROUP, INC., AMAZON.COM, INC., and DOES
3 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 Mercury,
8 a toxic chemical found in and on the dried mushrooms manufactured, imported, distributed, sold or
9 offered 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 cancer
13 and birth defects or other reproductive harm through exposures to Mercury, when they purchase,
14 ingest or handle Defendants’ dried mushrooms.

15 3. Detectable levels of Mercury are found in and on the dried mushrooms that
16 Defendants 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, dried mushrooms (“**PRODUCTS**”) containing Mercury, without
24 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to the
25 chemical, including, but not limited to, the *Dried Porcini Mushrooms 100% Boletus Edulis - 8 OZ;*
26 *UPC 709932082350 ASIN B09KVJ6LQZ*. Defendants’ conduct subjects them to civil penalties for
27 each violation, enjoinder as well as preliminary and permanent injunctive relief. Health & Safety
28 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 MARKY’S GROUP, INC. (“**MARKY’S GROUP**”) 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. MARKY’S GROUP manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in or into the State of California, or implies by its conduct that it
15 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in or into the
16 State of California.

17 9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
18 AMAZON.COM, INC. (“**AMAZON**”) was and is a “person” “in the course of doing business” with
19 ten (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and
20 25249.11.

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

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

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 or into 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 or into 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, **MARKY’S GROUP, AMAZON, MANUFACTURER**
17 **DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS** shall,
18 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

JURISDICTION AND VENUE

19
20 16. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
21 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
22 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
23 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
24 other trial courts.” The statute under which this action is brought does not specify any other basis of
25 subject matter jurisdiction.

26 17. The California Superior Court has jurisdiction over **DEFENDANTS**, based on
27 plaintiff’s information and good faith belief **DEFENDANTS** are each a person, firm, corporation or
28 association that is a citizen of the State of California, does sufficient business in California, has

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

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

12 **REGULATORY BACKGROUND AND LAW**

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

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

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

26 22. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
27 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
28 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s

1 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
2 27 C.C.R. § 25600(h).

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

6 24. On June 1, 1990, pursuant to Proposition 65’s implementing regulations, California
7 identified and listed Mercury as a chemical known to the State to cause birth defects and other
8 reproductive harm or toxicity. Mercury became subject to the “clear and reasonable warning”
9 requirements one year later, on June 1, 1991. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety
10 Code §§ 25249.8, 25249.10(b).

11 **STATEMENT OF FACTS**

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

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

19 27. Based on the foregoing, Plaintiff’s attorney executed a Certificate of Merit, attesting
20 there was a reasonable and meritorious case for this private action and included the factual
21 information necessary to support the Certificate of Merit when it served the notice on the California
22 Attorney General’s Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

23 28. On June 23, 2022, plaintiff served a 60-Day Notice of Violation (“**Notice**”), together
24 with the Certificate of Merit, on MARKY’S GROUP, AMAZON, the California Attorney General’s
25 Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales
26 of the PRODUCTS, consumers in the State of California were, and are, being exposed to Mercury
27 through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a
28 “clear and reasonable warning,” as required by Proposition 65.


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

Dated: June 23, 2023

Respectfully submitted,

SEVEN HILLS LLP

By:  _____

Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful