

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

WHOLE FOODS MARKET CALIFORNIA, INC.; DOES 1-100

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

CLEAN PRODUCT ADVOCATES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California
County of Alameda

07/12/2023

Chad Finke, Executive Officer / Clerk of the Court

By: S. Ashby-Anderson Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): ALAMEDA COUNTY SUPERIOR COURT

2233 SHORE LINE DRIVE, ALAMEDA, CA 94501

CASE NUMBER:
(Número del Caso):

23CV038178

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ELHAM SHABATIAN SBN 221953, 12100 WILSHIRE BLVD., STE 800, LOS ANGELES, CA 90025; (310) 200-32227

DATE: 07/12/2023

Clerk, by

(Fecha)

Chad Finke, Executive Officer / Clerk of the Court

(Secretario)

S. Ashby-Anderson

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

07/12/2023 at 09:38:53 AM

By: Steven Ashby-Anderson,

Deputy Clerk

1 CLIFFWOOD LAW FIRM
2 ELHAM SHABATIAN (SBN 221953)
3 12100 Wilshire Boulevard
4 Suite 800
5 Los Angeles, California 90025
6 Tel: (310) 200-3227
7 Email: ellie@cliffwoodlaw.com

8 Attorneys for Plaintiff
9 Clean Product Advocates, LLC

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ALAMEDA**

12 CLEAN PRODUCT ADVOCATES LLC, a) Case No. 23CV038178
13 California limited liability)
14 Company,) COMPLAINT FOR PENALTY AND
15) INJUNCTION
16)
17) Violation of Proposition 65,
18) the Safe Drinking Water and
19) Toxic Enforcement Act of 1986
20) (Health & Safety Code Sections
21) 25249.5, et. seq.)
22)
23) ACTION IS AN UNLIMITED CIVIL
24) CASE (exceeds \$25,000.00)
25)
26)
27)
28)

15 vs. PLAINTIFF,
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15 WHOLE FOODS MARKET CALIFORNIA,)
16 INC.; DOES 1-100,)
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16 DEFENDANTS.

1 INTRODUCTION

2 1. This Complaint is a representative action brought by
3 Clean Product Advocates, LLC ("Plaintiff" or "CPA") in the
4 public interest of the citizens of the State of California (the
5 "People"). Plaintiff seeks to remedy Defendants' failure to
6 inform the People of exposure to "CADMIUM", a known carcinogen.
7 Defendants continue to expose consumers to CADMIUM by
8 manufacturing, importing, selling and/or distributing food
9 products including, but not limited to, Wholefoods "Seafood
10 Medley" ("Source"). Defendants therefore know and intend that
11 customers will ingest products containing CADMIUM.
12

13 2. Under California's Safe Drinking Water and Toxic
14 Enforcement Act of 1986, and California Health and Safety Code
15 sections 25249.6 et. seq. ("Proposition 65"), "[n]o person in
16 the course of doing business shall knowingly and intentionally
17 expose any individual to a chemical known to the state to cause
18 cancer or reproductive toxicity without first giving clear and
19 reasonable warning to such individual" (Health & Safety
20 Code Section 25249.6).

21 3. California has identified and listed CADMIUM as
22 a chemical known to cause cancer as early as October 1, 1992,
23 and as a chemical known to cause developmental/reproductive
24 toxicity on February 27, 1987.

25 4. Defendants have failed to sufficiently warn consumers
26 and individuals in California about potential exposure to
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1 CADMIUM in connection with Defendants' manufacture, import,
2 sale, or distribution of Products in violation of Proposition
3 65.

4 5. Plaintiff seeks injunctive relief compelling Defendants
5 to sufficiently warn consumers in California before exposing
6 them to CADMIUM in Products (Health & Safety Code Section
7 25249.7(a)). Plaintiff also seeks civil penalties against
8 Defendants for their violations of Proposition 65 along with
9 reasonable attorney's fees and legal costs (Health & Safety Code
10 Section 25249.7(b)).

11 **PARTIES**

12 6. Plaintiff CPA is an LLC operating in the State
13 of California dedicated to protecting the health of California
14 citizens through the elimination or reduction of toxic exposure
15 from consumer products. It brings this action in the public
16 interest pursuant to Health & Safety Code Section 25249.7.

17 7. Defendant Whole Foods Market California Inc. ("WFMC") is
18 a California corporation organized and existing under the laws
19 of the State of California and manufacturers and/or imports,
20 and/or sells and/or distributes Products in Alameda County and
21 throughout the State of California, within the meaning of Health
22 & Safety Code Section 25249.11.

1 8. Defendants DOES 1 through 100, inclusive, are sued
2 herein under fictitious names. Their true names and capacities
3 are unknown to Plaintiff. When their true names and capacities
4 are ascertained, plaintiff will amend this complaint by
5 inserting their true names and capacities herein. Plaintiff is
6 informed and believes and thereon alleges, that each of the
7 fictitiously named defendants is responsible in some manner for
8 the occurrences alleged in this complaint and that Plaintiff's
9 damages as alleged in this complaint were proximately caused by
10 such defendants.
11

12 9. Plaintiff is informed and believes and thereon
13 alleges, that at all times alleged in this complaint, each
14 defendant was the agent, alter ego, servant, joint venturer,
15 joint employer and/or employee, of each of the remaining
16 defendants, and in doing the things hereinafter alleged, was
17 acting within the course and scope of said relationships and
18 with the permission and consent of all other co-defendants. All
19 conduct was also ratified by Defendants and each of them.
20
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22 **JURISDICTION AND VENUE**

23 10. California Constitution Article VI, Section 10, grants
24 the Superior Court original jurisdiction in all cases except
25 those given by statute to other trial courts. The Health and
26 Safety Code statutes upon which this action is based does not
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1 give jurisdiction to any other Court. As such, this Court has
2 jurisdiction over this action.

3 11. Venue is proper in Los Alameda County Superior Court
4 pursuant to Code of Civil Procedure Sections 394, 395 and 395.5
5 as wrongful conduct as alleged in this complaint has occurred
6 and continues to occur in this County.

7 12. Defendants have sufficient minimum contacts in the
8 State of California or otherwise purposefully avail themselves
9 of the California market. Exercising jurisdiction over
10 Defendants would therefore be consistent with traditional
11 notions of fair play and substantial justice.
12

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65 - Against all Defendants**

16 13. Plaintiff incorporates by reference herein, each and
17 every allegation set forth above in this complaint.
18

19 14. Proposition 65 mandates that California citizens be
20 informed about exposures to chemicals that cause cancer, birth
21 defects, and other reproductive harm.

22 15. More than sixty days prior to the filing of this
23 lawsuit naming each Defendant, Plaintiff issued a 60-Day Notice
24 Of Violation dated June 29, 2022 ("Notice") as required by and
25 in compliance with Proposition 65. Plaintiff provided said
26 Notice to the various required public enforcement agencies along
27

1 with a Certificate of Merit. The Notice alleged that Defendants
2 violated Proposition 65 by failing to sufficiently warn
3 consumers in California of the health hazards associated with
4 exposure to CADMIUM contained in their Products.

5 16. The appropriate public enforcement agencies provided
6 with the Notice failed to commence and diligently prosecute a
7 cause of action against Defendants.

8 17. At all times relevant herein, Defendants manufactured
9 and/or imported and/or sold and/or distributed Products
10 containing CADMIUM, including, but not limited to, the Product
11 named "Seafood Medley" in violation of Health and Safety Code
12 Sections 25249.6 et. seq. Plaintiff is informed and believes and
13 thereon alleges that such violations have continued after
14 receipt of the Notice described above and such conduct will
15 continue to occur into the future.

16 18. In manufacturing, importing, selling and/or
17 distributing Products, including, but not limited to, "Seafood
18 Medley, Defendants failed to provide a clear and
19 reasonable warning to consumers in the State of California who
20 may be exposed to CADMIUM through reasonably foreseeable use of
21 the Products.

22 19. The Products exposed individuals to CADMIUM through
23 direct ingestion. This exposure is a natural and foreseeable
24 consequence of Defendants placing the Products into the stream
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1 of commerce. As such Defendants intend that consumers will
2 ingest said Products, exposing them to CADMIUM.

3 20. Defendants knew or should have known that their
4 Products contained CADMIUM and exposed individuals to CADMIUM as
5 described above in this complaint. The Notice described above in
6 this complaint informed Defendants of the presence of CADMIUM in
7 their products. Likewise, media coverage concerning CADMIUM and
8 related chemicals in consumer products provided "Constructive
9 Notice" to Defendants. Defendants' actions, therefore, were
10 deliberate and not accidental.
11

12 21. Individuals exposed to CADMIUM contained in
13 Defendants' Products through direct ingestion resulting from
14 reasonably foreseeable use of the Products have suffered and
15 continue to suffer irreparable harm. There is no other plain,
16 speedy or adequate remedy at law other than the relief requested
17 in this complaint.
18

19 22. Defendants are liable for a maximum civil penalty of
20 \$2,500.00 per day for each violation of Proposition 65 pursuant
21 to Health and Safety Code Section 252497(b). Injunctive relief
22 is also appropriate pursuant to Health and Safety Code Section
23 25249.7(a).
24

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff prays for judgment against Defendants,
27 and each of them, as follows:
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1 1. Civil penalties in the amount of \$2,500.00 per day for
2 each violation of the law as described above in this complaint.
3 Plaintiff alleges that damages total a minimum of \$1,000,000.00;

4 2. A preliminary and permanent injunction against Defendants
5 from manufacturing, importing, selling and/or distributing
6 Products in California without providing a clear and reasonable
7 warning as required by Proposition 65 and related regulations;

8 3. Reasonable attorney's fees and costs of suit;

9 4. Pre-Judgement interest as allowed by law; and

10 5. Such other and further relief as may be just and proper.


11 Respectfully Submitted:

12 Dated: June 27, 2023

13 CLIFFWOOD LAW FIRM,

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15
16 By: 

17 Elham Shabatian
18 Attorney for Plaintiff
19 Clean Product Advocates LLC
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SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1221 Oak Street, Oakland, CA 94612		FILED Superior Court of California County of Alameda 07/12/2023 Clerk of the Court, Executive Officer / Clerk of the Court By:  Deputy S. Ashby-Anderson
PLAINTIFF(S): Clean Product Advocates LLC		
DEFENDANT(S): Whole Food Market California, Inc.		
NOTICE OF CASE ASSIGNMENT		CASE NUMBER: 23CV038178

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

ASSIGNED JUDGE: Frank Roesch
 DEPARTMENT: 17
 LOCATION: Rene C. Davidson Courthouse
 1221 Oak Street, Oakland, CA 94612
 PHONE NUMBER: (510) 267-6933
 FAX NUMBER:
 EMAIL ADDRESS: Dept17@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedures section 170.6 must be exercised within the time period by law. (See Code of Civ. Proc. §§ 170.6, subd. (a.)(2) and 101.3)

NOTICE OF NONAVAILABILITY OF COURT REPORTERS: Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording. Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

GENERAL PROCEDURES

Following assignment of a civil case to a specific department, all pleadings, papers, forms, documents and writings can be submitted for filing at either Civil Clerk's Office, located at the Rene C. Davidson Courthouse, Room 109, 1225 Fallon Street, Oakland, California, 94612, and the Hayward Hall of Justice, 24405 Amador Street, Hayward, California, 94544 and through Civil e-filing. Information regarding Civil e-filing can be found on the courts website. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

NOTICE OF CASE ASSIGNMENT

**ASSIGNED FOR ALL PURPOSES TO
JUDGE Frank Roesch
DEPARTMENT 17**

All parties are expected to know and comply with the Local Rules of this Court, which are available on the court's website at [http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules\(1\)](http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules(1)) and with the California Rules of Court, which are available at www.courtinfo.ca.gov.

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processed (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days." The court's website contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

COURT RESERVATIONS

The use of the Court Reservation System (CRS) is now mandated in many civil courtrooms within the Alameda County Superior Court. Instead of calling or emailing the courtroom to make a reservation, parties with a case assigned to a courtroom using CRS are directed to utilize CRS to make and manage their own reservations, within parameters set by the courtrooms. CRS is available 24 hours a day, seven days a week and reservations can be made from a computer or smart phone. Please note, you are prohibited from reserving more than one hearing date for the same motion.

Prior to scheduling any motion on CRS, including any Applications for Orders for Appearance and Examination, or continuing any motion, please review the online information (if any) for the courtroom in which you are reserving. There may be specific and important conditions associated with certain motions and proceedings. Information is available on the court's eCourt Public Portal at www.eportal.alameda.courts.ca.gov.

Chad Finke, Executive Officer / Clerk of the Court



By

S. Ashby-Anderson, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA		Reserved for Clerk's File Stamp FILED Superior Court of California County of Alameda 07/12/2023 Clad Flake, Executive Officer / Clerk of the Court By: <u><i>S. Ashby-Anderson</i></u> Deputy S. Ashby-Anderson
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1221 Oak Street, Oakland, CA 94612		
PLAINTIFF: Clean Product Advocates LLC		
DEFENDANT: Whole Food Market California, Inc.		CASE NUMBER: 23CV038178
NOTICE OF CASE MANAGEMENT CONFERENCE		

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (Cal. Rules of Court, 3.110(b)).

Give notice of this conference to all other parties and file proof of service.

Your Case Management Conference has been scheduled on:

Date: 12/01/2023	Time: 9:00 AM	Dept.: 17
Location: Rene C. Davidson Courthouse 1221 Oak Street, Oakland, CA 94612		

TO DEFENDANT(S)/ATTORNEY(S) FOR DEFENDANT(S) OF RECORD:

The setting of the Case Management Conference does not exempt the defendant from filing a responsive pleading as required by law, you must respond as stated on the summons.

TO ALL PARTIES who have appeared before the date of the conference must:

Pursuant to California Rules of Court, 3.725, a completed Case Management Statement (Judicial Council form CM-110) must be filed and served at least 15 calendar days before the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record.

Meet and confer, in person or by telephone as required by Cal. Rules of Court, rule 3.724.

Post jury fees as required by Code of Civil Procedure section 631.

If you do not follow the orders above, the court may issue an order to show cause why you should not be sanctioned under Cal. Rules of Court, rule 2.30. Sanctions may include monetary sanctions, striking pleadings or dismissal of the action.

The judge may place a Tentative Case Management Order in your case's on-line register of actions before the conference. This order may establish a discovery schedule, set a trial date or refer the case to Alternate Dispute Resolution, such as mediation or arbitration. Check the court's eCourt Public Portal for each assigned department's procedures regarding tentative case management orders at <https://eportal.alameda.courts.ca.gov>.

<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</p>	<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612</p>	<p align="center">FILED Superior Court of California County of Alameda 07/12/2023</p>
<p>PLAINTIFF/PETITIONER: Clean Product Advocates LLC</p>	<p>Chad Finke, Executive Officer / Clerk of the Court By: <u><i>S. Ashby-Anderson</i></u> Deputy</p>
<p>DEFENDANT/RESPONDENT: Whole Food Market California, Inc.</p>	<p>S. Ashby-Anderson</p>
<p align="center">CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 23CV038178</p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Clean Product Advocates LLC
149 S. Barrington
#214
Los Angeles, CA 90049

Elham Shabatian
Cliffwood Law Firm, PC
12100 Wilshire Blvd Suite 800
Los Angeles, CA 90025

Dated: 07/14/2023

Chad Finke, Executive Officer / Clerk of the Court

By:

S. Ashby-Anderson

S. Ashby-Anderson, Deputy Clerk

CERTIFICATE OF MAILING