

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) 200-3227

DATE: 07/12/2023

(Fecha)

Clerk, by

Chad Finke, Executive Officer / Clerk of the Court (Secretario) S. Ashby-Anderson

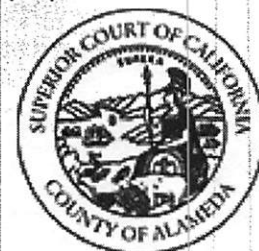
, Deputy

(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 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

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)

1 vs.
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

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

DEFENDANTS.

1

2

3

4

5

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
21

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
27
28

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
25
26
27
28

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:
28

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,

14
15
16 By: 

17 Elham Shabatian
18 Attorney for Plaintiff
19 Clean Product Advocates LLC
20
21
22
23
24
25
26
27
28