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8 KEEP AMERICA SAFE AND BEAUTIFUL

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**05/30/2023**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

**CGC-23-606788**

12 KEEP AMERICA SAFE AND BEAUTIFUL,

13 Plaintiff,

14 v.

15 WHEAT MONTANA FARMS, INC.; and  
16 DOES 1-30, inclusive,

17 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 WHEAT MONTANA FARMS, INC., and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

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

9 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn  
10 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*  
11 (“**consumers**”) they are being exposed to Cadmium, a substance known to the State of California to  
12 cause birth defects or other reproductive harm when they ingest or handle Defendants’ flax seed.

13 3. Detectable levels of Cadmium are found in the flax seed that Defendants manufacture,  
14 import, sell or distribute for sale to individuals throughout California.

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

20 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and offer  
21 for sale, in and into California flax seed (“**PRODUCTS**”) containing Cadmium, without Proposition  
22 65’s requisite health hazard warning regarding the harms associated with exposures to the chemical,  
23 including, but not limited to, *Milled Brown Flax Seed NET WT 1.75 LBS UPC 7 2596307168 2 BEST*  
24 *IF USED BY: 03 31 2023*. Defendants’ conduct subjects them to civil penalties for each violation,  
25 enjoinder as well as preliminary and permanent injunctive relief. Health & Saf. Code § 25249.7(a)  
26 and (b).

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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 migrating into food from pollution and to increasing public awareness of  
6 those chemicals through the promotion of sound environmental practices and corporate responsibility.  
7 KASB is a person within the meaning of Health & Safety Code § 25249.11(a), and it brings this  
8 action in the public interest, pursuant to Health and Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant  
10 WHEAT MONTANA FARMS, INC. (“**WHEAT MONTANA**”) was and is a “person” “in the  
11 course of doing business” within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

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

16 9. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person in  
17 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
18 MANUFACTURER DEFENDANTS, and each of them, grow, assemble, package, fabricate, and  
19 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS  
20 offered for sale or use in California.

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

26 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the  
27 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
28 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS

1 for sale to individuals in the State of California.

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

8 13. At all times mentioned herein, WHEAT MONTANA, MANUFACTURER  
9 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,  
10 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

11 **JURISDICTION AND VENUE**

12 14. This Court has jurisdiction over this action, pursuant to Health & Safety Code  
13 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior  
14 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,  
15 which grants the Superior Court “original jurisdiction in all causes except those given by statute to  
16 other trial courts.” The statute under which this action is brought does not specify any other basis of  
17 subject matter jurisdiction.

18 15. The California Superior Court has jurisdiction over DEFENDANTS, based on plaintiff’s  
19 information and good faith belief DEFENDANTS are each a person, firm, corporation or association  
20 that is a citizen of the State of California, does sufficient business in California, has sufficient  
21 minimum contacts in California, and/or otherwise purposefully and intentionally avail themselves of  
22 the California market through their manufacture, farming, packaging, importation, distribution,  
23 promotion, marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment  
24 renders the exercise of personal jurisdiction by California courts consistent with traditional notions of  
25 fair play and substantial justice.

26 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code  
27 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
28 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of

1 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
2 conducted, and continue to conduct, business in the County of San Francisco with respect to the  
3 PRODUCTS that are the subject of this action.

#### 4 **REGULATORY BACKGROUND AND LAW**

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

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

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

18 20. Exposing individuals to hazardous chemicals means to cause individuals to ingest,  
19 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. Cal. Code  
20 Regs. (“CCR”), tit. 27, § 25102(i). An exposure to a hazardous chemical is defined as that which  
21 “results from a person’s acquisition, purchase, storage, consumption or other reasonably foreseeable  
22 use of a product...” 27 CCR § 25600(h).

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

26 22. On May 1, 1997, pursuant to Proposition 65’s implementing regulations, California  
27 identified and listed Cadmium (Cd) as a chemical known to the State to cause developmental toxicity  
28 and male reproductive toxicity. Cadmium became subject to the “clear and reasonable warning”

1 requirements one year later, on May 1, 1998. 27 CCR § 27001(c); Health & Saf. Code §§ 25249.8,  
2 25249.10(b).

3 **STATEMENT OF FACTS**

4 23. Plaintiff purchased DEFENDANTS' PRODUCTS, without a warning, in California.

5 24. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, and  
6 consulted with a person with relevant and appropriate knowledge and expertise, who, after reviewing  
7 the collected data and analyzing the risk of exposure to Cadmium, determined the PRODUCTS  
8 subject consumers in California to exposure to the listed chemical at levels requiring a warning under  
9 the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their  
10 reasonably foreseeable and intended usages.

11 25. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting to a  
12 reasonable and meritorious case for this private action and confidentially provided the requisite  
13 privileged factual information supporting the certificate to the California Attorney General's Office.  
14 Health & Saf. Code § 25249.7(d); Title 11 CCR § 3102.

15 26. Thereafter, on August 24, 2022, plaintiff served a 60-Day Notice of Violation  
16 ("Notice"), together with the certificate of merit, on WHEAT MONTANA, the California Attorney  
17 General's Office, and the requisite public enforcement agencies, alleging, as a result of  
18 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being  
19 exposed to Cadmium through their reasonably foreseeable use of the PRODUCTS without first  
20 receiving a "clear and reasonable warning," as required by Proposition 65.

21 27. After receiving plaintiff's Notice, no public enforcement agency has commenced and is  
22 diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce the  
23 alleged violations that are the subject of the Notice.

24 **FIRST CAUSE OF ACTION**

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

26 28. KASB realleges and incorporates by reference, as if fully stated herein, the allegations  
27 set forth in Paragraphs 1 through 27, inclusive.

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1           29. DEFENDANTS' PRODUCTS contain Cadmium at levels requiring a clear and  
2 reasonable warning under Proposition 65.

3           30. DEFENDANTS know or should have known the PRODUCTS they manufacture, grow,  
4 package, import, distribute, sell, and offer for sale in California contain Cadmium. As a result of  
5 plaintiff's Notice, DEFENDANTS also have actual knowledge of the presence of Cadmium in the  
6 PRODUCTS.

7           31. The PRODUCTS DEFENDANTS manufacture, grow, package, import, distribute, sell,  
8 and offer for sale in or into the State of California cause exposures to Cadmium, both direct and/or  
9 indirect dermal contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

10          32. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
11 continues to cause, exposures to Cadmium.

12          33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS  
13 exposes individuals to Cadmium through direct and indirect ingestion.

14          34. DEFENDANTS intend exposures to Cadmium from the reasonably foreseeable use of  
15 the PRODUCTS will occur by their deliberate, non-accidental participation in the California  
16 marketplace.

17          35. The exposures to Cadmium, caused by DEFENDANTS and endured by consumers in  
18 California, are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

19          36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers  
20 in California who have been, or who will be, exposed to Cadmium through ingestion resulting from  
21 the use of the PRODUCTS as intended.

22          37. Contrary to the express policy and statutory prohibition of Proposition 65, consumers  
23 exposed to Cadmium through ingestion from their handling and consumption of the PRODUCTS that  
24 DEFENDANTS sold without a "clear and reasonable" health hazard warning have suffered, and  
25 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

26          38. DEFENDANTS manufacture, grow, package, import, distribute, sell, and offer the  
27 PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS'  
28 violations have continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS'

1 violations are ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

7 **PRAYER FOR RELIEF**

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

10 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
11 permanently enjoin DEFENDANTS from manufacturing, growing, packaging, distributing,  
12 importing, marketing or otherwise offering the PRODUCTS for sale or use in California without first  
13 providing a “clear and reasonable warning” to consumers addressing the harms associated with  
14 exposures to Cadmium;

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

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

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

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

23 Dated: May 30, 2023

Respectfully submitted,

24 SEVEN HILLS LLP

25  
26 By:  \_\_\_\_\_

27 Laralei Paras, Esq.  
Attorneys for Plaintiff  
28 *Keep America Safe and Beautiful*