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Superior Court of California,
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David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

5 Attorneys for Plaintiff,
6 **KEEP AMERICA SAFE AND BEAUTIFUL**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

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11 **KEEP AMERICA SAFE AND BEAUTIFUL**, in
12 the public interest,

Civil Action No.: **24STCV09008**

13 Plaintiff,

**COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

14 v.

[Cal. Health and Safety Code Sec. 25249.6, *et
seq.*]

15 Naomi Whittel Brands LLC; Amazon.com
16 Services, LLC; and DOES 1 through 100,
17 inclusive,

18 Defendants.
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KJT LAWGROUP ^{LLP}
Jivalagian | Thomassian

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Keep America Safe and Beautiful, in the public interest, based on information and belief and investigation of counsel, except for information based on knowledge, hereby makes the following allegations.

INTRODUCTION

1. This Complaint seeks to remedy Defendants’ continuing failure to adequately warn individuals in California that they are being exposed to lead, a chemical known to the State of California to cause cancer and other reproductive harm. Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale and consumption of Defendants’ Simply Goodfats - Creamy MCT - Unflavored MCT Oil powder; UPC #: X002YBFBA3 (the “Product”). The Product is available to consumers in California through a multitude of retail channels including, without limitation (a) third-party traditional brick-and-mortar retail locations; (b) via the internet through Defendants’ website; and (c) via the internet through third-party retail websites. Consumers are exposed to lead when they consume the Product.

2. Under California’s Proposition 65, Health and Safety Code § 25249.5, et seq., it is unlawful for businesses to knowingly and intentionally expose individuals in California to chemicals known to the State to cause cancer, birth defects or other reproductive harm without providing clear and reasonable warnings to individuals prior to their exposure. Defendants introduce a product contaminated with significant quantities of lead into the California marketplace, exposing consumers of the Product to lead.

3. Despite the fact that the Defendants expose consumers to lead, Defendants provide no warning, or inadequate warnings about the reproductive hazards associated with lead exposure. Defendants’ conduct thus violates the warning provision of Proposition 65, Health & Safety Code § 25249.6.

PARTIES

4. Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL (“KASB”) is a non-profit

1 corporation organized under the laws of California and acting in the interest of the general public,
2 dedicated to protecting the health of California citizens and the environment through the elimination
3 or reduction of toxic chemicals utilized in manufacturing consumer products and to increasing
4 public awareness of those chemicals through the promotion of sound environmental practices and
5 corporate responsibility. KASB is a person within the meaning of Health & Safety Code §
6 25249.11(a), and it brings this action in the public interest, pursuant to Health and Safety Code §
7 25249.7(d).

8 5. Defendant NAOMI WHITTEL BRANDS, LLC (“NAOMI”) is a person in the
9 course of doing business within the meaning of Health & Safety Code § 25249.11 NAOMI
10 manufactures, distributes and/or sells the Product for sale and use in California.

11 6. Defendant AMAZON.COM SERVICES, LLC (“AMAZON”) is a person in the
12 course of doing business within the meaning of Health & Safety Code § 25249.11. AMAZON
13 manufactures, distributes and/or sells the Product for sale and use in California.

14 7. The true names of DOES 1 through 100 are unknown to Plaintiff at this time. When
15 their identities are ascertained, the Complaint shall be amended to reflect their true names.

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17 **JURISDICTION AND VENUE**

18 8. The Court has jurisdiction over this action pursuant to Health & Safety Code §
19 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
20 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
21 other trial courts.

22 9. This Court has jurisdiction over Defendants as business entities that do sufficient
23 business, have sufficient minimum contacts in California or otherwise intentionally avails itself of the
24 California market through the sale, marketing or use of the Product in California and/or by having
25 such other contacts with California so as to render the exercise of jurisdiction over them by the
26 California courts consistent with traditional notions of fair play and substantial justice.

27 10. Venue is proper in Los Angeles County Superior Court because one or more of the
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1 violations arise in the County of Los Angeles.
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3 **BACKGROUND FACTS**

4 11. The People of the State of California have declared by initiative under Proposition
5 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
6 other reproductive harm.” Proposition 65 § 1(b).

7 12. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed
8 by the State of California as known to cause cancer, birth defects or other reproductive harm above
9 certain levels without a “clear and reasonable warning” unless the business responsible for the
10 exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states
11 in pertinent part:

12 No person in the course of doing business shall knowingly and intentionally expose any
13 individual to a chemical known to the state to cause cancer or reproductive toxicity without
14 first giving clear and reasonable warning to such individual...

15 13. The State of California has officially listed lead as a chemical known to cause cancer
16 and reproductive harm.

17 14. The level of exposure to a chemical causing reproductive toxicity under Proposition
18 65 is determined by multiplying the level in question times the reasonably anticipated rate of
19 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). for exposures to consumer
20 products, the level of exposure is calculated using the reasonably anticipated rate of intake or
21 exposure for average users of the consumer product. 27 C.C.R. § 25821(C)(2).

22 15. Defendants’ Product contains sufficient quantities of lead such that consumers,
23 including pregnant women, who consume the Product are exposed to lead. The primary route of
24 exposure for the violations is direct ingestion when consumers orally ingest the Product. These
25 exposures occur in homes, workplaces and everywhere in California where the Product is
26 consumed.

27 16. During the relevant one-year period herein, no clear and reasonable warning was
28 provided with the Product regarding the reproductive hazards of lead.

1 17. Any person acting in the public interest has standing to enforce violations of
2 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
3 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
4 within such time. Health & Safety Code § 25249.7(d).

5 18. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff
6 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, the
7 District Attorneys of every county in California, the City Attorneys of every California city with a
8 population greater than 750,000 and to the named Defendants. The Notice of Violation of
9 Proposition 65 was filed on or about April 11, 2023. In compliance with Health & Safety Code §
10 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the
11 name and address of each violator; (2) the statute violated; (3) the time period during which
12 violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure
13 to lead from the Product, and (b) the specific type of Product sold and used in violation of
14 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of
15 the violations described in each Notice.

16 19. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
17 General, the District Attorneys of every county in California, the City Attorneys of every California
18 city with a population greater than 750,000 and to the named Defendants. In compliance with
19 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff’s
20 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
21 expertise who reviewed facts, studies or other data regarding the exposures to lead alleged in each
22 Notice; and (2) based on the information obtained through such consultations, believes that there is
23 a reasonable and meritorious case for an enforcement action based on the facts alleged in each
24 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each
25 Certificate served on the Attorney General included factual information-provided on a confidential
26 basis-sufficient to establish the basis for the Certificate, including the identity of the person(s)
27 consulted by the Plaintiff’s counsel and the facts, studies or other data reviewed by such persons.
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1 20. None of the public prosecutors with the authority to prosecute violations of
2 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
3 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of
4 Plaintiff's Notices.

5 21. Defendants both know and intend that individuals will consume the Product, thus
6 exposing them to lead.

7 22. Under Proposition 65, an exposure is "knowing" where the party responsible for
8 such exposure has:

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10 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health & Safety
11 Code § 25249.8(a)] is occurring. No knowledge that the... exposure is unlawful is required.
12 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
13 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division
14 2, § 12201).

15 23. Defendants have been informed of the lead in their Products by the 60-Day Notice
16 of Violation and accompanying Certificate of Merit served on them.

17 24. Defendants also have constructive knowledge that the Products contain lead due to
18 the widespread media coverage concerning the problem of lead in consumer products.

19 25. As entities that manufacture, import, distribute and/or sell the Product for use in the
20 California marketplace, Defendants know or should know that the Product contains lead and that
21 individuals who consume the Product will be exposed to lead. The lead exposures to consumers
22 who consume the Product are a natural and foreseeable consequence of Defendant's placing the
23 Product into the stream of commerce.

24 26. Nevertheless, Defendants continue to expose consumers to lead without prior clear
25 and reasonable warnings regarding the reproductive hazards of lead.

26 27. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.

28 28. Any person "violating or threatening to violate" Proposition 65 may be enjoined in

1 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is
2 defined to mean "to create a condition in which there is a substantial probability that a violation will
3 occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not to
4 exceed \$2,500 per day for each violation of Proposition 65.
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6 **CAUSE OF ACTION**

7 (Violations of the Health & Safety Code 25249.6)

8 29. Plaintiff realleges and incorporates by reference as if specifically set forth herein
9 Paragraphs 1 through 27, inclusive.

10 30. By placing the Product into the stream of commerce, each Defendant is a person in
11 the course of doing business within the meaning of Health & Safety Code § 25249.11.

12 31. Lead is a chemical listed by the State of California as known to cause cancer and
13 other reproductive harm.

14 32. Defendants know that average use of the Product will expose users of the Product to
15 lead. Defendants intend that the Product be used in a manner that results in exposures to lead from
16 the Products.

17 33. Defendants have failed, and continue to fail, to provide clear and reasonable
18 warnings regarding the reproductive toxicity of lead to users of the Products.

19 34. By committing the acts alleged above, Defendants have at all times relevant to this
20 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to lead
21 without first giving clear and reasonable warnings to such individuals regarding the reproductive
22 toxicity of lead.
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24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for judgment against Defendants as follows:

26 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties
27 against the Defendants in the amount of \$2,500 per day for each violation of Proposition 65;
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2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendants from offering the Product for sale in California without either reformulating the Products such that no Proposition 65 warnings are required or providing prior clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarranted exposures to lead resulting from use of Product sold, as Plaintiff shall specify in further application to the Court;

4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and

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

Dated: April 9, 2024

KJT LAW GROUP, LLP

By: _____


Tiro Krikorian, Esq.
Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL