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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL)	CASE NO.: 37-2024-00027106-CU-NP-CTL
Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
VS.)	<i>(Cal. Health & Safety Code § 25249.6 et seq.)</i>
THE VITAMIN SHOPPE; QUALITY PASTA COMPANY)	
AND)	
DOES 1-25 INCLUSIVE)	
DEFENDANTS.)	

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Keep America Safe and Beautiful, in the public interest of the citizens of the State of California, to enforce the people’s right to be informed of the dangers from exposures to Cadmium (hereafter “Listed

1 Chemicals”) toxic chemicals when using the “High Protein Shells & Cheese” sold by
2 DEFENDANTS in California.

3 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS` continuing failures
4 to warn California citizens about their exposure to the Listed Chemicals during the normal and
5 intended use of the “High Protein Shells & Cheese” (hereafter “PRODUCT(S)” that the
6 DEFENDANT manufactured, distributed and sold, in the State of California and PRODUCTS
7 that DEFENDANTS continue to manufacture, distribute and offer for sale in the State of
8 California.

9 3. California citizens, including children, through the act of buying, acquiring or
10 utilizing the products, are exposed to the listed chemicals in homes, workplaces, and places
11 throughout California where these products are used and consumed.

12 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6 et seq. (Proposition 65), “No person in the course of
14 doing business shall knowingly and intentionally expose any individual to a chemical known to
15 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
16 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

17 5. California identified and listed Cadmium as a chemical known to cause cancer.
18 Cadmium became subject to the warning requirements of Proposition 65 for cancer beginning on
19 October 1, 1987 (*27 CCR § 27002; Cal. Health & Safety Code § 25249.6.*)

20 6. California identified and listed Cadmium as a chemical known to cause birth
21 defects. Cadmium became subject to the warning requirements of Proposition 65 for
22 reproductive harm beginning on May 1, 1997. (*27 CCR Sec. 27002; Cal. Health & Safety Code*
23 *Sec. 25249.6*)

24 7. DEFENDANTS` past and continuing failures to warn consumers and/or other
25 individuals in the State of California about their exposure to the LISTED CHEMICALS in
26 conjunction with defendant’s sale of the PRODUCT is a violation of Proposition 65 and subjects
27 DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such violation.
28

1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
2 believes that such violations will continue to occur into the future.

3 22. After receipt of the claims asserted in the sixty-day notices of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a
5 cause of action against DEFENDANTS under Proposition 65.

6 23. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

9 24. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
11 CHEMICAL.

12 25. The PRODUCTS, through normal use exposes users to the LISTED CHEMICALS
13 in such a way as to expose individuals to the LISTED CHEMICALS through inhalation, dermal
14 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

15 26. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
17 by 27 CCR§ 25602(b).

18 27. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL.

20 28. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
21 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
22 accidental participation in the manufacture, distribution and/or offer for sale or use of
23 PRODUCTS to individuals in the State of California.

24 29. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and/or other individuals in the State of California who were or who could become
26 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

27 30. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the

1 reasonably foreseeable use of the PRODUCTS, sold by DEFENDENTS without a “clear and
2 reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm
3 they have no plain, speedy or adequate remedy at law.

4 31. As a consequence of the above-described acts, DEFENDANTS are liable for a
5 maximum civil penal of \$2,500 per day for each violation pursuant to California Health& Safety
6 Code § 25249.7(b).

7 32. As a consequence of the above-described acts, California Health & Safety Code §
8 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 33. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
11 hereinafter.

12 **PRAYER FOR RELIEF**

13 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

14 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
15 civil penalties against DEFENDANTS, in the amount of \$2,500 per day for each violation
16 alleged herein;

17 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
18 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
19 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
20 warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to the
21 LISTED CHEMICAL;

22 3. That the Court grant plaintiff its reasonable attorneys’ fees and cost of suit; and,

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

24 Respectfully Submitted,

25 Dated: June 7, 2024

Law Offices of Stephanie Sy

26
27 By:  _____

Stephanie Sy, Esq.
Attorney for Plaintiff