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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/12/2024
Clerk of the Court

BY: AUSTIN LAM
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-24-616352**

12 EMA BELL,

13 Plaintiff,

14 vs.

15 WHOLE FOODS MARKET SERVICES,
16 INC., WHOLE FOODS MARKET
17 CALIFORNIA, INC., WHOLE FOODS
18 MARKET, INC.,

19 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

20 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause
21 of action in the public interest of the citizens of the State of California.

22 **BACKGROUND OF THE CASE**

23 1. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
25 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

29 2. This complaint is a representative action brought by Plaintiff in the public interest
30 of the citizens of the State of California to enforce the People's right to be informed of the health
31 hazards caused by exposure to lead, a toxic chemical found in (a) *Wild Planet*® wild tuna pasta
32 salads, UPC # 829696004525, (b) 365 Whole Foods Market wild Alaska pink salmon, UPC #

1 099482416003, (c) Natierra Superfoods freeze dried organic strawberries, UPC # 812907016219,
2 and (d) *Amazing Grass*® organic grass & shrooms powders, UPC # 829835007653, sold and/or
3 distributed by defendants Whole Foods Market Services, Inc., Whole Foods Market California,
4 Inc., and/or Whole Foods Market, Inc. (collectively, “Whole Foods” or “Defendants” and each a
5 “Defendant”) in California.

6 3. Lead is a harmful chemical known to the State of California to cause cancer and
7 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as
8 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations
9 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
10 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to
11 cause birth defects or other reproductive harm.

12 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
13 within California or sell products therein to comply with Proposition 65 regulations. Included in
14 such regulations is the requirement that businesses must label any product containing a Proposition
15 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
16 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
17 chemical.

18 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
19 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
20 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
21 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
22 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
23 25249.7.

24 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
25 without a requisite exposure warning, (a) *Wild Planet*® wild tuna pasta salads, UPC #
26 829696004525, (b) 365 Whole Foods Market wild Alaska pink salmon, UPC # 099482416003,
27 (c) Natierra Superfoods freeze dried organic strawberries, UPC # 812907016219, and (d) *Amazing*
28

1 *Grass*® organic grass & shrooms powders, UPC # 829835007653 (collectively, the “Products”
2 and each a “Product”) that expose persons to lead when used for their intended purpose.

3 7. Defendants’ failure to warn consumers and other individuals in California of the
4 health hazards associated with exposure to lead in conjunction with the sale and/or distribution of
5 the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
6 penalties described herein.

7 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
8 65 in accordance with Health and Safety Code § 25249.7(b).

9 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
10 Defendants to provide purchasers or users of the Products with required warnings related to the
11 dangers and health hazards associated with exposure to lead pursuant to Health and Safety Code §
12 25249.7(a).

13 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

14 **PARTIES**

15 11. Plaintiff is a citizen of the State of California acting in the interest of the general
16 public to promote awareness of exposures to toxic chemicals in products sold in California and to
17 improve human health by reducing hazardous substances contained in such items. She brings this
18 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

19 12. Defendant Whole Foods Market Services, Inc., through its business, effectively
20 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it
21 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use
22 in the State of California. Plaintiff alleges that defendant Whole Foods Market Services, Inc. is a
23 “person” in the course of doing business within the meaning of Health & Safety Code sections
24 25249.6 and 25249.11.

25 13. Defendant Whole Foods Market California, Inc., through its business, effectively
26 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it
27 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use
28 in the State of California. Plaintiff alleges that defendant Whole Foods Market California, Inc. is

1 a “person” in the course of doing business within the meaning of Health & Safety Code sections
2 25249.6 and 25249.11.

3 14. Defendant Whole Foods Market, Inc., through its business, effectively imports,
4 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
5 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the
6 State of California. Plaintiff alleges that defendant Whole Foods Market, Inc. is a “person” in the
7 course of doing business within the meaning of Health & Safety Code sections 25249.6 and
8 25249.11.

9 VENUE AND JURISDICTION

10 15. Venue is proper in the County of San Francisco because one or more of the
11 instances of wrongful conduct occurred, and continue to occur in this county and/or because
12 Defendants conducted, and continue to conduct, business in the County of San Francisco with
13 respect to the Products.

14 16. This Court has jurisdiction over this action pursuant to California Constitution
15 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
16 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement
17 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
18 jurisdiction over this lawsuit.

19 17. This Court has jurisdiction over Defendants because each Defendant is either a
20 citizen of the State of California, has sufficient minimum contacts with the State of California, is
21 registered with the California Secretary of State as foreign corporations authorized to do business
22 in the State of California, and/or has otherwise purposefully availed itself of the California market.
23 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
24 and permissible with traditional notions of fair play and substantial justice.

25 STATUTORY BACKGROUND

26 18. The people of the State of California declared in Proposition 65 their right “[t]o be
27 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
28 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

1 19. To effect this goal, Proposition 65 requires that individuals be provided with a
2 “clear and reasonable warning” before being exposed to substances listed by the State of California
3 as causing cancer and/or birth defects or other reproductive harm. H&S Code § 25249.6 states, in
4 pertinent part:

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

8 20. In this case, exposures are caused by consumer products. A “Consumer Product” is
9 defined as “any article, or component part thereof, including food, that is produced, distributed, or
10 sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit. 27, §
11 25600.1, subd. (d).) Food includes “dietary supplements” as defined in California Code of
12 Regulations, title 17, section 10200. (*Id.* at subd. (g).) An exposure to a chemical in a Consumer
13 Product is one “which results from a person’s acquisition, purchase, storage, consumption or other
14 reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
15 consumer service.” (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that “a person in the
16 course of doing business ... shall provide a warning to any person to whom the product is sold or
17 transferred unless the product is packaged or labeled with a clear and reasonable warning.”

18 21. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
19 more of the following methods individually or in combination:¹

- 20 a. A warning that appears on a product’s label or other labeling.
- 21 b. Identification of the product at the retail outlet in a manner which provides
22 a warning. Identification may be through shelf labeling, signs, menus, or a combination
23 thereof.
- 24 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
25 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet

26 _____
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 with such conspicuousness, as compared with other words, statements, designs, or devices
2 in the label, labeling or display as to render it likely to be read and understood by an
3 ordinary individual under customary conditions of purchase or use.

4 d. A system of signs, public advertising identifying the system and toll-free
5 information services, or any other system that provides clear and reasonable warnings.

6 22. Proposition 65 provides that any “person who violates or threatens to violate” the
7 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
8 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
9 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
10 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
11 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

12 **FACTUAL BACKGROUND**

13 23. On October 1, 1992, the state of California listed lead as a chemical known to cause
14 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
15 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
16 1987, the State of California listed lead as a chemical known to cause birth defects or other
17 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
18 State to cause cancer and birth defects or other reproductive harm.

19 24. The exposures that are the subject of the Notices result from the purchase,
20 acquisition, and recommended use of the Products. The primary route of exposure to lead is
21 through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur
22 which will increase blood lead levels. No clear and reasonable warning is provided with the
23 Products regarding the health hazards of exposure.

24 25. Defendants have processed, marketed, distributed, offered to sell and/or sold the
25 Products in California since at least November 3, 2023 with respect to the *Wild Planet*® wild tuna
26 pasta salads; and since at least November 13, 2023 with respect to the 365 Whole Foods Market
27 wild Alaska pink salmons, the Natierra Superfoods freeze dried organic strawberries, and the
28

1 *Amazing Grass*® organic grass & shrooms powders. The Products continue to be distributed and
2 sold in California without the requisite warning information.

3 26. At all times relevant to this action, Defendants have knowingly and intentionally
4 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable
5 exposure warning to such individuals.

6 27. As a proximate result of acts by Defendants, as a person in the course of doing
7 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
8 California, including in San Francisco County, have been exposed to lead without a clear and
9 reasonable warning on the Products. The individuals subject to the violative exposures include
10 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
11 the Products.

12 **SATISFACTION OF NOTICE REQUIREMENTS**

13 28. Plaintiff purchased the Products from Whole Foods. At the time of purchase,
14 Defendants did not provide a Proposition 65 exposure warning for lead or any other Proposition
15 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

16 29. The Products were sent to a testing laboratory to determine if, and what amount of,
17 lead a consumer would be exposed to per serving size.

18 30. The laboratory provided the results of its analysis. Results of these tests determined
19 the Products expose users to lead (collectively, the “Chemical Test Reports” and each a “Chemical
20 Test Report”).

21 31. Plaintiff provided the Chemical Test Reports and Products to an analytical chemist
22 to determine if, based on the findings of the Chemical Test Reports and the reasonable and
23 foreseeable use of the Products, exposure to lead will occur at levels that require Proposition 65
24 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
25 Code of Regulations.

26 32. On November 3, 2023, Plaintiff received from the analytical chemist an exposure
27 assessment report which concluded that persons in California who use the *Wild Planet*® wild tuna
28 pasta salads will be exposed to levels of lead that require a Proposition 65 exposure warning. On

1 November 13, 2023, Plaintiff received from the analytical chemist an exposure assessment report
2 which concluded that persons in California who use the 365 Whole Foods Market wild Alaska
3 pink salmons, the Natierra Superfoods freeze dried organic strawberries, and the *Amazing Grass*®
4 organic grass & shrooms powders will be exposed to levels of lead that require a Proposition 65
5 exposure warning.

6 33. On November 3, 2023 (*Wild Planet*® wild tuna pasta salads) and November 13,
7 2023 (365 Whole Foods Market wild Alaska pink salmons, Natierra Superfoods freeze dried
8 organic strawberries, and *Amazing Grass*® organic grass & shrooms powders), Plaintiff gave
9 notice of alleged violation of Health and Safety Code § 25249.6 (collectively, the “Notices” and
10 each a “Notice”) to Defendants concerning the exposure of California citizens to lead contained in
11 the Products without proper warning, subject to a private action to Defendants and to the California
12 Attorney General’s office and the offices of the County District attorneys and City Attorneys for
13 each city with a population greater than 750,000 persons wherein the herein violations allegedly
14 occurred. See attached at Exhibits “A” – “D” a true and correct copy of each Notice.

15 34. The Notices complied with all procedural requirements of Proposition 65 including
16 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
17 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead
18 exposure, and that counsel believed there was meritorious and reasonable cause for a private
19 action.

20 35. After receiving the Notices, and to Plaintiff’s best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
22 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
23 are the subject of the Notices.

24 36. Plaintiff is commencing this action more than sixty (60) days from the date of each
25 Notice to Defendants, as required by law.

1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

3 37. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 36 of
4 this Complaint as though fully set forth herein.

5 38. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
6 of the Products.

7 39. Use of the Products will expose users to lead, a hazardous chemical found on the
8 Proposition 65 list of chemicals known to be hazardous to human health.

9 40. The Products do not comply with the Proposition 65 warning requirements.

10 41. Plaintiff, based on her best information and belief, avers that at all relevant times
11 herein, and since at least November 3, 2023 with respect to the *Wild Planet*® wild tuna pasta
12 salads; and since at least November 13, 2023 with respect to the 365 Whole Foods Market wild
13 Alaska pink salmons, the Natierra Superfoods freeze dried organic strawberries, and the *Amazing*
14 *Grass*® organic grass & shrooms powders, continuing until the present, that Defendants have
15 continued to knowingly and intentionally expose California users and consumers of the Product to
16 lead without providing required warnings under Proposition 65.

17 42. The exposures that are the subject of the Notices result from the purchase,
18 acquisition, and recommended use of the Products. The primary route of exposure to lead is
19 through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur
20 which will increase blood lead levels. No clear and reasonable warning is provided with the
21 Products regarding the health hazards of exposure.

22 43. Plaintiff, based on her best information and belief, avers that such exposures will
23 continue every day until clear and reasonable warnings are provided to purchasers and users or
24 until this known toxic chemical is removed from the Products.

25 44. Defendants have knowledge that the normal and reasonably foreseeable use of the
26 Products exposes individuals to lead, and Defendants intend that exposures to lead will occur by
27 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
28 Products to consumers in California

1 45. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 Complaint.

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

6 47. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
7 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
10 relief:

11 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
12 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
13 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

14 B. That the court preliminarily and permanently enjoin Defendants mandating
15 Proposition 65 compliant warnings on the Products;

16 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
17 amount of \$50,000.00.

18 D. That the court grant any further relief as may be just and proper.

19 Dated: July 12, 2024

BRODSKY SMITH

20 By: 

21 Evan J. Smith (SBN242352)
22 Ryan P. Cardona (SBN302113)
23 9465 Wilshire Boulevard, Suite 300
24 Beverly Hills, CA 90212
25 Telephone: (877) 534-2590
26 Facsimile: (310) 247-0160

Attorneys for Plaintiff

EXHIBIT “A”

LAW OFFICES
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856.795.7250

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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

November 3, 2023

President/CEO Wild Planet Foods, Inc. c/o William F. Carvalho 1585 Heartwood Drive, Suite F McKinleyville, CA 95519	President/CEO Wild Planet Foods, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Amazon Technologies Company c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	President/CEO Amazon Technologies Company dba Whole Foods Market c/o Corporation Service Company 251 Little falls Drive Wilmington, DE 19808
President/CEO Amazon Technologies, Inc. c/o Corporation Service Company 112 North Curry Street Carson, NV 89703	President/CEO Whole Foods Market Services, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Whole Foods Market IP, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code §

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Wild Planet Foods, Inc.; Amazon Technologies Company; Amazon Technologies Company dba Whole Foods Market; Amazon Technologies, Inc.; Whole Foods Market Services, Inc.; Whole Foods Market IP, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least November 3, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Wild Tuna Pasta Salad	Wild Tuna Pasta Salad UPC# 829696004525

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

² The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “B”

LAW OFFICES
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MINEOLA, NY 11501
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PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

November 13, 2023

President/CEO Amazon Technologies Company c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	President/CEO Amazon Technologies Company dba Whole Foods Market c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
President/CEO Amazon Technologies, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Amazon Technologies, Inc. c/o Corporation Service Company 112 North Curry Street Carson City, NV 89703
President/CEO Whole Foods Market California, Inc. c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203	President/CEO Whole Foods Market Services, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Amazon Technologies Company; Amazon Technologies Company dba Whole Foods Market; Amazon Technologies, Inc.; Whole Foods Market California, Inc.; Whole Foods Market Services, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least November 13, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Wild Alaska Pink Salmon	365 Whole Foods Market Wild Alaska Pink Salmon UPC# 099482416003

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

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III. RESOLUTION OF THE CLAIMS

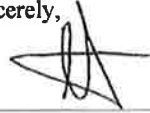
Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “C”

LAW OFFICES
BRODSKY SMITH

9595 WILSHIRE BLVD., STE. 900
 BEVERLY HILLS, CA 90212
 877.534.2590
 www.brodskysmith.com

NEW JERSEY OFFICE
 1310 NORTH KINGS HIGHWAY
 CHERRY HILL, NJ 08934
 856.795.7250

NEW YORK OFFICE
 240 MINEOLA BOULEVARD
 MINEOLA, NY 11501
 516.741.4977

PENNSYLVANIA OFFICE
 TWO BALA PLAZA, STE. 805
 BALA CYNWYD, PA 19004
 610.667.6200

November 13, 2023

President/CEO Brandstorm, Inc. c/o Thierry Ollivier 7535 Woodman Place Van Nuys, CA 91405	President/CEO Brandstorm, Inc. dba Natierra c/o Thierry Ollivier 7535 Woodman Place Van Nuys, CA 91405
Member/Manager Toboco, LLC c/o Registered Agents Inc. 401 Ryland Street, Suite 200-A Reno, NV 89502	President/CEO Whole Foods Market Services, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Amazon Technologies Company c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	President/CEO Amazon Technologies Company dba Whole Foods Market c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
President/CEO Amazon Technologies, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Amazon Technologies, Inc. c/o Corporation Service Company 112 North Curry Street Carson City, NV 89703
President/CEO Whole Foods Market California, Inc. c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

With respect to the Product herein, Bell has identified a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Brandstorm, Inc.; Brandstorm, Inc. dba Natierra; Toboco, LLC; Amazon Technologies Company; Amazon Technologies Company dba Whole Foods Market; Amazon Technologies, Inc.; Whole Foods Market California, Inc.; Whole Foods Market Services, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least November 13, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Freeze Dried Organic Strawberries	Natierra Superfoods Freeze Dried Organic Strawberries UPC# 812907016219

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

² The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

II. PROPOSITION 65 INFORMATION

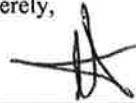
For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “D”

LAW OFFICES
BRODSKY SMITH

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 www.brodskysmith.com

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NEW YORK OFFICE
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 MINEOLA, NY 11501
 516.741.4977

PENNSYLVANIA OFFICE
 TWO BALA PLAZA, STE. 805
 BALA CYNWYD, PA 19004
 610.667.6200

November 13, 2023

Member/Manager Grass Advantage, LLC c/o Corporate Creations Network Inc. 5901 W. Century Blvd., #750 Los Angeles, CA 90045	Member/Manager Grass Advantage, LLC 220 Newport Center Drive, Suite 22 Newport Beach, CA 92660
Member/Manager Grass Advantage, LLC c/o Corporate Creations Network Inc. 3411 Silverside Road Tatnall Building, Suite 104 Wilmington, DE 19810	President/CEO Glanbia Performance Nutrition (Manufacturing) Inc. c/o Corporate Creations Network Inc. 5901 W. Century Blvd., #750 Los Angeles, CA 90045
President/CEO Glanbia Performance Nutrition NA, Inc. c/o Corporation Creations Network Inc. 3411 Silverside Road Tatnall Building, Suite 104 Wilmington, DE 19810	President/CEO Glanbia Performance Nutrition (Manufacturing) Inc. c/o Corporate Creations Network Inc. 3411 Silverside Road Tatnall Building, Suite 104 Wilmington, DE 19810
President/CEO Amazon Technologies Company c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	President/CEO Amazon Technologies Company dba Whole Foods Market c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
President/CEO Amazon Technologies, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Amazon Technologies, Inc. c/o Corporation Service Company 112 North Curry Street Carson City, NV 89703
President/CEO Whole Foods Market California, Inc. c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203	President/CEO Whole Foods Market Services, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

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I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Grass Advantage, LLC; Glanbia Performance Nutrition (Manufacturing) Inc.; Glanbia Performance Nutrition NA, Inc.; Amazon Technologies Company; Amazon Technologies Company dba Whole Foods Market; Amazon Technologies, Inc.; Whole Foods Market California, Inc.; Whole Foods Market Services, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least November 13, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Organic Grass & Shrooms Powder	Amazing Grass Organic Grass & Shrooms Powder UPC# 829835007653

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are

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Sincerely,



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