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**FILED**  
**ALAMEDA COUNTY**

MAY 29 2008

CLERK OF THE SUPERIOR COURT

By Michelle Coke Deputy

ORIGINAL

SUPERIOR COURT  
COUNTY OF ALAMEDA

RG 08389960

14 PEOPLE OF THE STATE OF CALIFORNIA ex rel.  
15 EDMUND G. BROWN JR., Attorney General of the  
State of California,

Plaintiffs,

v.

17 AVALON NATURAL PRODUCTS, INC.,  
18 BEAUMONT PRODUCTS, INC., NUTRIBIOTIC,  
19 WHOLE FOODS MARKET CALIFORNIA, INC., and  
Does 1 - 100

Defendants,

COMPLAINT

FOR CIVIL PENALTY AND  
INJUNCTIVE RELIEF

Environmental/Toxic Tort (30)  
(Proposition 65, Health & Saf.  
Code §§ 25249.5 *et seq.*)

23 The People of the State of California, by and through EDMUND G. BROWN JR.,  
24 Attorney General, hereby allege:

25 **I. INTRODUCTION**

26 1. This complaint seeks an injunction and civil penalties to remedy defendants' failure  
27 to warn consumers that cleaning products such as body washes and gels and liquid dish soaps  
28 containing 1,4-dioxane sold by defendants expose consumers to chemicals known to the State

1 of California to cause cancer. Under the Safe Drinking Water and Toxic Enforcement Act of  
2 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses  
3 must provide persons with a "clear and reasonable warning" before exposing them to such  
4 chemicals.

## 5 II. PARTIES

6 2. Plaintiffs are the People of the State of California, by and through the Attorney  
7 General of California, Edmund G. Brown Jr. Health and Safety Code section 25249.7(c)  
8 provides that actions to enforce Proposition 65 may be brought by the Attorney General in the  
9 name of the People of the State of California. Government Code section 12607 authorizes the  
10 Attorney General to bring an action for equitable relief in the name of the People of the State  
11 of California against any person to protect the natural resources of the State from pollution,  
12 impairment, or destruction. Business and Professions Code section 17200 provides that  
13 actions to prohibit unfair and unlawful business practices may be brought by the Attorney  
14 General in the name of the People of the State of California.

15 3. Defendant Avalon Natural Products, Inc. is a business entity that manufactures,  
16 distributes and/or sells body washes and gels to consumers within the state of California.

17 4. Defendant Beaumont Products, Inc. is a business entity that manufactures, distributes  
18 and/or sells liquid dish soap to consumers within the state of California.

19 5. Defendant NutriBiotic is a business entity that manufactures, distributes and/or sells  
20 body washes and gels to consumers within the state of California.

21 6. Defendant Whole Foods Market California, Inc. is a business entity that  
22 manufactures, distributes and/or sells body washes and gels to consumers within the state of  
23 California.

24 7. The true names and capacities of the defendants sued herein as Does 1 through 100  
25 are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will  
26 amend this complaint to allege the true names and capacities of these defendants when they  
27 have been determined. Each of the fictitiously named defendants is responsible in some  
28 manner for the conduct alleged herein.

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### III. JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.

9. This Court has jurisdiction over the defendants named above because they do sufficient business in California, or otherwise have sufficient minimum contacts in California to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because the cause arises in the County of Alameda where some of the violations of law have occurred.

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### IV. STATUTORY BACKGROUND

#### A. Proposition 65

11. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by a vote of the People in November of 1986.

12. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

No 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 giving clear and reasonable warning to such individual, except as provided in Section 25249.10

13. Implementing regulations promulgated by the Health and Welfare Agency provide that the warning method "must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure." 22 CCR § 12601(a).

14. The regulations prescribe certain types of warnings that are considered valid, including: (A) warnings on labels, (B) identification at the retail outlet through "shelf labeling, signs, menus, or a combination thereof," and (C) "a system of signs, public advertising identifying the system and toll-free information services, that provides clear and reasonable warnings." 22 CCR §§ 12601(b)(1)(A)-(C).

15. Proposition 65 also establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety

1 Code section 25249.8. No warning need be given concerning a listed chemical until one year  
2 after the chemical first appears on the list. Id., § 25249.10(b).

3 16. Proposition 65 provides that any person "violating or threatening to violate" the  
4 statute may be enjoined in any court of competent jurisdiction. Health & Safety Code, §  
5 25249.7. To "threaten to violate" is defined to mean "to create a condition in which there is a  
6 substantial probability that a violation will occur." Id., § 25249.11(e). In addition, violators  
7 are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil  
8 action. Id., § 25249.7(b). Actions to enforce the law "may be brought by the Attorney  
9 General in the name of the People of the State of California or by any district attorney". Id., §  
10 25249.7(c).

### 11 **B. The Unfair Competition Law**

12 17. California Business and Professions Code section 17200 provides that "unfair  
13 competition shall mean and include unlawful, unfair or fraudulent business practice." Section  
14 17203 of the Business and Professions Code provides that "(a)ny person performing or  
15 proposing to perform an act of unfair competition within this state may be enjoined in any  
16 court of competent jurisdiction."

17 18. Section 17206(a) provides that any person violating Section 17200 "shall be liable  
18 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,  
19 which shall be assessed and recovered in a civil action brought in the name of the people of the  
20 State of California by the Attorney General or by any district attorney." Under section 17205,  
21 these penalties are "cumulative to each other and to the remedies or penalties available under  
22 all other laws of this state."

### 23 **V. FACTS**

24 19. 1,4-dioxane was listed under Proposition 65 as a chemical known to the State of  
25 California to cause cancer on January 1, 1988. Title 22, Cal.Code Regs., § 12000.

26 20. Defendants manufacture, distribute and/or sell body washes and gels or liquid dish  
27 soaps. The body washes and gels and liquid dish soaps contain 1,4-dioxane. Each defendant  
28 knows that the body washes and gels and liquid dish soaps contain 1,4-dioxane and that

1 persons using these products are exposed to 1,4-dioxane. Further, based on information and  
2 belief, plaintiff alleges that each defendant has known since at least May 29, 2004 that the  
3 body washes and gels and liquid dish soaps contain 1,4-dioxane and that persons using these  
4 products are exposed to 1,4-dioxane.

5 21. From at least May 29, 2004 to the present, Defendants have failed to provide  
6 consumers of the body washes and gels and liquid dish soaps with a clear and reasonable  
7 warning that they are being exposed to chemicals known to the State of California to cause  
8 cancer.

## 9 VI. FIRST CAUSE OF ACTION

10 (For Violation of Proposition 65)

11 22. Paragraphs 1 through 21 are realleged as if fully set forth herein.

12 23. Plaintiffs are informed and believe, and based on such information and belief allege,  
13 that each defendant employs ten or more persons.

14 24. By committing the acts alleged above, each defendant has, in the course of doing  
15 business, knowingly and intentionally exposed individuals to 1,4-dioxane, a chemical known to  
16 the state of California to cause cancer, without first giving clear and reasonable warning to  
17 such individuals, within the meaning of Health and Safety Code section 25249.6.

18 25. Said violations render each defendant liable to plaintiff for civil penalties of up to  
19 \$2,500 per day for each violation.

## 20 VII. SECOND CAUSE OF ACTION

21 (For Unlawful Business Practices)

22 26. Paragraphs 1 through 25 are realleged as if fully set forth herein.

23 27. By committing the acts alleged above, each defendant has engaged in unlawful  
24 business practices which constitute unfair competition within the meaning of Business and  
25 Professions Code section 17200.

26 28. Said violations render each defendant liable to plaintiff for civil penalties of up to  
27 \$2,500 per day for each violation.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs pray that the Court:

3 1. Pursuant to the First and Second Causes of Action, grant civil penalties according to  
4 proof;

5 2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions  
6 Code sections 17203, enter such preliminary injunctions, permanent injunctions, or other  
7 orders prohibiting defendant from exposing persons within the State of California to 1,4-  
8 dioxane without providing clear and reasonable warnings, as plaintiffs shall specify in further  
9 application to the court;

10 3. Award plaintiffs their costs of suit;

11 4. Grant such other and further relief as the court deems just and proper.

12 Respectfully submitted,

13 Dated: 5/29/08

EDMUND G. BROWN JR., Attorney General  
of the State of California

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