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6

FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
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10 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation
11

12 Plaintiff,

13 vs.

14 GOLDEN HERITAGE FOODS, LLC
and DOES 1-200, inclusive,
15

16 Defendants.
17
18
19

Case No.: *li* ✓ 1204659

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code § 25249.6, et seq.

By Fax

1 Plaintiff Center for Environmental Health, in the public interest, hereby makes the
2 following allegations based on information and belief and investigation of counsel, except for
3 information based on knowledge:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds
7 (collectively, "Lead"), chemicals known to the state of California to cause cancer and birth
8 defects and other reproductive harm. Such exposures have occurred, and continue to occur,
9 through the distribution, sale and consumption of Defendants' honey (the "Products").
10 California consumers are exposed to Lead when they consume the Products.

11 2. Under California's Proposition 65 (Health & Safety Code § 25249.5 *et*
12 *seq.*), it is unlawful for businesses to knowingly and intentionally expose individuals in
13 California to chemicals known to the State to cause cancer, birth defects or other
14 reproductive harm without providing clear and reasonable warnings to such individuals prior
15 to exposure. Defendants introduce Products contaminated with significant quantities of Lead
16 into the California marketplace, exposing consumers of their Products to Lead.

17 3. Despite exposing California consumers to Lead, Defendants provide no
18 warnings whatsoever about the carcinogenic or reproductive hazards associated with Lead
19 exposure. Defendants' conduct therefore violates the warning provision of Proposition 65
20 (Health & Safety Code § 25249.6).

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
23 non-profit corporation dedicated to protecting people from exposures to toxic chemicals.
24 CEH is based in Oakland, California and is incorporated under the laws of the State of
25 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a)
26 and brings this enforcement action in the public interest pursuant to Health & Safety Code §
27 25249.7(d). CEH is a nationally recognized environmental organization that has prosecuted
28 numerous Proposition 65 cases in the public interest. These cases have resulted in significant

1 11. Venue is proper in Marin County because one or more of the violations
2 arise in the County of Marin.

3 **BACKGROUND FACTS**

4 12. Proposition 65 prohibits knowingly and intentionally exposing people to
5 chemicals identified by the State of California as known to cause cancer, birth defects or
6 other reproductive harm without first giving a clear and reasonable warning, unless the
7 business responsible for the exposure can demonstrate that a statutory exemption applies.
8 Health & Safety Code § 25249.6, 25249.10.

9 13. On February 27, 1987, the State of California listed lead as a chemical
10 known to cause reproductive toxicity. Lead is identified as a reproductive toxicant under
11 three subcategories: “developmental reproductive toxicity,” which means harm to the
12 developing fetus, “female reproductive toxicity” which means harm to the female
13 reproductive system, and “male reproductive toxicity” which means harm to the male
14 reproductive system. 27 California Code of Regulations (“CCR”) § 27001(c). On February
15 27, 1988, exposures to lead became subject to the clear and reasonable warning requirement
16 regarding Proposition 65 reproductive toxicants. 27 CCR § 27001(c); Health & Safety Code
17 § 24249.10(b).

18 14. On October 1, 1992, the State of California listed lead and lead
19 compounds as chemicals known to cause cancer. On October 1, 1993, exposures to lead and
20 lead compounds became subject to the clear and reasonable warning requirement regarding
21 Proposition 65 carcinogens. 27 CCR § 27001(c); Health & Safety Code § 24249.10(b).

22 15. Young children are especially susceptible to the toxic effects of lead.
23 Adverse health effects from Lead exposure generally occur in children at lower blood Lead
24 levels than in adults. Children absorb and retain more Lead in proportion to their body
25 weight than do adults. Young children have a greater prevalence of iron deficiency, a
26 condition that can increase gastrointestinal absorption of Lead. The body accumulates Lead
27 over time and releases it slowly, so even small doses received in childhood can, over time,
28 cause adverse health effects including reproductive toxicity later in life.

1 16. There is no safe level of exposure to Lead and even minute amounts of
2 Lead exposure have been proven harmful. Davis, J.M., Svendgaard, D.J., "Lead and Child
3 Development," *Nature* 3:29:297-300, 1987. Studies have repeatedly concluded that Lead
4 concentrations in children's blood previously deemed acceptable can have adverse health
5 effects. *See e.g.*, Canfield, R.L., *et al.*, "Intellectual Impairment in Children with Blood Lead
6 Concentrations below 10 µg per Deciliter," *New England Journal of Medicine* 348:16
7 (2003). Another study demonstrated that even very low blood Lead levels in children can
8 have impacts on their grades in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C.,
9 "Subclinical Lead Toxicity in U.S. Children and Adolescents," *Neurodevelopmental*
10 *Disabilities II Platform*, 2000.

11 17. Even short term Lead exposures for pregnant women can have long-term
12 harmful effects on their children. Hu, H., *et al.*, "Fetal Lead Exposure at Each State of
13 Pregnancy as a Predictor of Infant Mental Development," *Environmental Health*
14 *Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*, "Reduced Intellectual Development in
15 Children with Prenatal Lead Exposure," *Environmental Health Perspectives* 114:5, 2006.

16 18. Defendants' Products contain sufficient quantities of Lead that those who
17 consume the Products are exposed to Lead. Such exposures occur as California consumers
18 directly ingest the Products. No clear and reasonable warning is provided to users of the
19 Products regarding the carcinogenic or reproductive hazards of Lead.

20 19. Any person acting in the public interest has standing to enforce violations
21 of Proposition 65 provided that such person first has supplied the requisite public enforcers
22 with a 60-Day Notice of Violation per the statutory requirements, and that such public
23 enforcers are not diligently prosecuting the action within such time. Health & Safety Code §
24 25249.7(d).

25 20. More than sixty days prior to commencing this action, CEH provided a
26 60-Day Notice of Violation of Proposition 65 to each of the named Defendants, and to the
27 California Attorney General, the District Attorney of every county in California, and the City
28 Attorney of every California city with a population greater than 750,000. In compliance with

1 Health & Safety Code § 25249.7(d) and 27 CCR § 25903(b), the Notice included: (1) the
2 name and address of each violator; (2) the time period during which the violations occurred;
3 (3) a description of the violations; (4) a description of the Product alleged to have caused the
4 Lead exposure; (5) the route of exposure by which Lead exposure was alleged to have
5 occurred; and (6) the name of the Proposition 65-listed chemical involved in the violations
6 described in the Notice.

7 21. In compliance with Health & Safety Code § 25249.7(d) and 11 CCR §
8 3101, CEH's 60-Day Notice of Violation of Proposition 65 also included a Certificate of
9 Merit which certified that CEH's counsel: (1) has consulted with one or more persons with
10 relevant and appropriate experience or expertise who reviewed facts, studies or other data
11 regarding the Lead exposures alleged in the Notice; and (2) believes, based on the
12 information obtained through such consultations, that there is a reasonable and meritorious
13 case for a citizen enforcement action based on the facts alleged in the Notice. In compliance
14 with Health & Safety Code § 25249.7(d) and 11 CCR § 3102, the Certificate of Merit served
15 on the Attorney General included factual information sufficient to establish the basis for the
16 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,
17 studies or other data review by such persons.

18 22. None of the public prosecutors with the authority to prosecute violations
19 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
20 Defendants under Health & Safety Code § 25249.5 *et seq.* based on the allegations contained
21 in the Notice.

22 23. Defendants know and intend that individuals will consume the Products,
23 thus exposing them to Lead. Under Proposition 65, an exposure is "knowing" where the
24 party responsible for such exposure has "knowledge of the fact that...exposure to a chemical
25 listed pursuant to [Health & Safety Code §25249.8(a)] is occurring. No knowledge that
26 the...exposure is unlawful is required." 27 CCR § 25102(n). This knowledge may be either
27 actual or constructive. *See, e.g.,* Final Statement of Reasons, Revised (November 4,
28 1988)(pursuant to former 22 CCR Division 2, § 12201).

1 24. Defendants have been informed of the Lead in their Products by the 60-
2 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

3 25. Defendants also have constructive knowledge that their Products contain
4 Lead due to widespread media coverage of Lead contamination in honey, especially imported
5 honey.

6 26. As companies that produce, import, distribute and/or sell the Products for
7 consumption in California, Defendants knew or should know that the Products contain Lead
8 and that individuals who consume the Products will be exposed to Lead. These Lead
9 exposures to California consumers of the Products are a natural and foreseeable result of
10 Defendants' placing the Products into the stream of commerce.

11 27. Defendants continue to expose consumers to Lead without prior clear and
12 reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.

13 **FIRST CAUSE OF ACTION**

14 **(Violations of California Health & Safety Code § 25249.6)**

15 **(Against All Defendants)**

16 28. CEH realleges and incorporates herein by reference Paragraphs 1 through
17 37, inclusive.

18 29. By placing the Products into the stream of commerce, each Defendant is a
19 person in the course of doing business within the meaning of Health & Safety Code §
20 25249.11.

21 30. Lead is a chemical listed by the State of California as known to cause
22 cancer, birth defects and other reproductive harm.

23 31. Defendants know that average use of the Products will expose users of the
24 Products to Lead. Defendants intend that the Products be used in a manner that results in
25 exposures to Lead from the Products.

26 32. Defendants have failed, and continue to fail, to provide clear and
27 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users
28 of the Products.

1 33. By committing the acts alleged herein, Defendants have at all times
2 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
3 individuals to Lead without first giving clear and reasonable warnings to such individuals
4 regarding the carcinogenicity and reproductive toxicity of Lead.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, CEH prays for judgment against Defendants as follows:

7 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
8 civil penalties against each of the Defendants in the amount of \$2,500 per day for each
9 violation of Proposition 65 according to proof;

10 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
11 preliminarily and permanently enjoin Defendants from offering the Products for sale in
12 California without first providing clear and reasonable warnings regarding the
13 carcinogenicity and reproductive toxicity of Lead;

14 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
15 Defendants to take action to cease ongoing unwarned exposures to Lead resulting from use of
16 the Products produced, imported, distributed or sold by Defendants;

17 4. That the Court, pursuant to Code of Civil Procedure 1021.5 or any other
18 applicable theory, grant CEH its reasonable attorneys' fees and costs; and

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

21 Dated: October 16, 2012

22 
23 Richard M. Franco
24 Attorney for Plaintiff
25 CENTER FOR
26 ENVIRONMENTAL HEALTH