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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy

5 Attorney for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation
11

12 Plaintiff,

13 vs.

14 RALPHS GROCERY COMPANY;
15 INTER-AMERICAN PRODUCTS, INC.;
16 GROCERY OUTLET, INC.;
17 ALLIED INTERNATIONAL
CORPORATION OF VA;
and DOES 1-100, inclusive,
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19 Defendants.
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Case No.: *CIV* **1202030**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, et seq.

BY FAX

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

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 public benefit, including the reformulation of thousands of consumer products to reduce or
2 remove toxic chemicals thereby making them safer. CEH also provides information to
3 Californians about the health risks associated with exposure to hazardous substances where
4 manufacturers and other responsible parties fail to do so.

5 5. Defendant RALPHS GROCERY COMPANY (“Ralphs”) is a person in
6 the course of doing business within the meaning of Health & Safety Code § 25249.11.
7 Ralphs produces, imports, distributes and/or sells the Products for sale and use in California.

8 6. Defendant INTER-AMERICAN PRODUCTS, INC. (“Inter-American”)
9 is a person in the course of doing business within the meaning of Health & Safety Code §
10 25249.11. Inter-American produces, imports, distributes and/or sells the Products for sale
11 and use in California.

12 7. Defendant GROCERY OUTLET, INC. (“Grocery Outlet”) is a person in
13 the course of doing business within the meaning of Health & Safety Code § 25249.11.
14 Grocery Outlet produces, imports, distributes and/or sells the Products for sale and use in
15 California.

16 8. Defendant ALLIED INTERNATIONAL CORPORATION OF VA
17 (“Allied International”) is a person in the course of doing business within the meaning of
18 Health & Safety Code § 25249.11. Allied International produces, imports, distributes and/or
19 sells the Products for sale and use in California.

20 9. Defendants DOES 1 through 100 are each a person in the course of doing
21 business within the meaning of Health & Safety Code § 25249.11. DOES 1 through 100
22 produce, import, distribute and/or sell the Products for sale and use in California.

23 10. CEH is unaware of the true names of Defendants sued under the fictitious
24 names DOES 1 through 100. When their true identities are ascertained, CEH will amend this
25 Complaint to reflect their true names.

26 11. The defendants identified in paragraphs 5 through 9 are collectively
27 referred to herein as “Defendants.”
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1 17. On October 1, 1992, the State of California listed lead and lead
2 compounds as chemicals known to cause cancer. On October 1, 1993, exposures to lead and
3 lead compounds became subject to the clear and reasonable warning requirement regarding
4 Proposition 65 carcinogens. 27 CCR § 27001(c); Health & Safety Code § 24249.10(b).

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

12 19. There is no safe level of exposure to Lead and even minute amounts of
13 Lead exposure have been proven harmful. Davis, J.M., Svendgaard, D.J., "Lead and Child
14 Development," *Nature* 3:29:297-300, 1987. Studies have repeatedly concluded that Lead
15 concentrations in children's blood previously deemed acceptable can have adverse health
16 effects. See e.g., Canfield, R.L., et al., "Intellectual Impairment in Children with Blood Lead
17 Concentrations below 10 µg per Deciliter," *New England Journal of Medicine* 348:16
18 (2003). Another study demonstrated that even very low blood Lead levels in children can
19 have impacts on their grades in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C.,
20 "Subclinical Lead Toxicity in U.S. Children and Adolescents," *Neurodevelopmental*
21 *Disabilities II Platform*, 2000.

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

27 21. Defendants' Products contain sufficient quantities of Lead that those who
28 consume the Products are exposed to Lead. Such exposures occur as California consumers

1 directly ingest the Products. No clear and reasonable warning is provided to users of the
2 Products regarding the carcinogenic or reproductive hazards of Lead.

3 22. Any person acting in the public interest has standing to enforce violations
4 of Proposition 65 provided that such person first has supplied the requisite public enforcers
5 with a 60-Day Notice of Violation per the statutory requirements, and that such public
6 enforcers are not diligently prosecuting the action within such time. Health & Safety Code §
7 25249.7(d).

8 23. More than sixty days prior to commencing this action, CEH provided a
9 60-Day Notice of Violation of Proposition 65 to each of the named Defendants, and to the
10 California Attorney General, the District Attorney of every county in California, and the City
11 Attorney of every California city with a population greater than 750,000. In compliance with
12 Health & Safety Code § 25249.7(d) and 27 CCR § 25903(b), the Notice included: (1) the
13 name and address of each violator; (2) the time period during which the violations occurred;
14 (3) a description of the violations; (4) a description of the Product alleged to have caused the
15 Lead exposure; (5) the route of exposure by which Lead exposure was alleged to have
16 occurred; and (6) the name of the Proposition 65-listed chemical involved in the violations
17 described in the Notice.

18 24. In compliance with Health & Safety Code § 25249.7(d) and 11 CCR §
19 3101, CEH's 60-Day Notice of Violation of Proposition 65 also included a Certificate of
20 Merit which certified that CEH's counsel: (1) has consulted with one or more persons with
21 relevant and appropriate experience or expertise who reviewed facts, studies or other data
22 regarding the Lead exposures alleged in the Notice; and (2) believes, based on the
23 information obtained through such consultations, that there is a reasonable and meritorious
24 case for a citizen enforcement action based on the facts alleged in the Notice. In compliance
25 with Health & Safety Code § 25249.7(d) and 11 CCR § 3102, the Certificate of Merit served
26 on the Attorney General included factual information sufficient to establish the basis for the
27 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,
28 studies or other data review by such persons.

1 25. None of the public prosecutors with the authority to prosecute violations
2 of 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 allegations contained
4 in the Notice.

5 26. Defendants know and intend that individuals will consume the Products,
6 thus exposing them to Lead. Under Proposition 65, an exposure is “knowing” where the
7 party responsible for such exposure has “knowledge of the fact that...exposure to a chemical
8 listed pursuant to [Health & Safety Code §25249.8(a)] is occurring. No knowledge that
9 the...exposure is unlawful is required.” 27 CCR § 25102(n). This knowledge may be either
10 actual or constructive. *See, e.g.*, Final Statement of Reasons, Revised (November 4,
11 1988)(pursuant to former 22 CCR Division 2, § 12201).

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

14 28. Defendants also have constructive knowledge that their Products contain
15 Lead due to widespread media coverage of Lead contamination in honey, especially imported
16 honey.

17 29. As companies that produce, import, distribute and/or sell the Products for
18 consumption in California, Defendants knew or should know that the Products contain Lead
19 and that individuals who consume the Products will be exposed to Lead. These Lead
20 exposures to California consumers of the Products are a natural and foreseeable result of
21 Defendants’ placing the Products into the stream of commerce.

22 30. Defendants continue to expose consumers to Lead without prior clear and
23 reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.

24 **FIRST CAUSE OF ACTION**

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

26 **(Against All Defendants)**

27 31. CEH realleges and incorporates herein by reference Paragraphs 1 through
28 30, inclusive.

1 32. By placing the Products into the stream of commerce, each Defendant is a
2 person in the course of doing business within the meaning of Health & Safety Code §
3 25249.11.

4 33. Lead is a chemical listed by the State of California as known to cause
5 cancer, birth defects and other reproductive harm.

6 34. Defendants know that average use of the Products will expose users of the
7 Products to Lead. Defendants intend that the Products be used in a manner that results in
8 exposures to Lead from the Products.

9 35. Defendants have failed, and continue to fail, to provide clear and
10 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users
11 of the Products.

12 36. By committing the acts alleged herein, Defendants have at all times
13 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
14 individuals to Lead without first giving clear and reasonable warnings to such individuals
15 regarding the carcinogenicity and reproductive toxicity of Lead.

16 **PRAYER FOR RELIEF**

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

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

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

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

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

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

Dated: May 1, 2012



Richard M. Franco
Attorney for Plaintiff
CENTER FOR
ENVIRONMENTAL HEALTH