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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

MAR 08 2013

CLERK OF THE COURT  
BY: MEREDITH GRIER  
Deputy Clerk

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

BY FAX

11 AMY CHAMBERLIN, in the public interest,

12 Plaintiff,

13 v.

14 WHOLE FOODS MARKET CALIFORNIA,  
15 INC., and DOES 1 through 500, inclusive,

16 Defendants.

CGC-13-529383  
CIVIL ACTION NO.

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

[Cal. Health and Safety Code  
Sec. 25249.6, *et seq.*]

1 Plaintiff Amy Chamberlin, in the public interest, based on information and belief and  
2 investigation of counsel, except for information based on knowledge, hereby makes the following  
3 allegations.

#### 4 INTRODUCTION

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

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

19 3. Despite the fact that the Defendant exposes consumers to Lead, Defendant provides  
20 no warnings whatsoever about the carcinogenic or reproductive hazards associated with Lead  
21 exposure. Defendant's conduct thus violates the warning provision of Proposition 65, Health &  
22 Safety Code § 25249.6.

#### 24 PARTIES

25 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &  
26 Safety Code § 25249.7(d).



1 certain levels without a "clear and reasonable warning" unless the business responsible for the  
2 exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6  
3 states, in pertinent part:

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

7 12. On February 27, 1987, the State of California officially listed lead as a chemical  
8 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant  
9 under three subcategories: "developmental reproductive toxicity," which means harms to the  
10 developing fetus, "female reproductive toxicity," which means harm to the female reproductive  
11 system, and "male reproductive toxicity," which means harm to the male reproductive system. 27  
12 California Code of Regulations ("C.C.R.") § 27001(c). On February 27, 1988, one year after it was  
13 listed as a chemical known to cause reproductive toxicity, lead became subject to the clear and  
14 reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Ibid*;  
15 Health & Safety Code § 25249.10(b).  
16

17 13. On October 1, 1992, the State of California officially listed lead and lead compounds  
18 as chemicals known to cause cancer. On October 1, 1993, one year after they were listed as  
19 chemicals known to cause cancer, lead and lead compounds became subject to the clear and  
20 reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. 27001(c);  
21 Health & Safety Code § 25249.10(b).  
22

23 14. There is no safe level of exposure to Lead and even minute amounts of Lead have  
24 been proven harmful to children and adults. *See* Report of the Advisory Committee on Childhood  
25 Lead Poisoning Prevention of the Centers For Disease Control and Prevention, "Low Level Lead  
26

1 Exposure Harms Children: A Renewed Call For Primary Prevention,” January 2, 2012. A study  
2 performed by the California Office of Environment Health Hazard Assessment determined that  
3 exposures to Lead even at levels previously considered safe have now been shown to cause adverse  
4 health effects including reduced cognitive ability and significant diminution of intellectual  
5 potential. Carlisle, *et al.*, “A Blood Lead Benchmark for Assessing Risks from Childhood Lead  
6 Exposure,” *Journal of Environmental Science and Health*, 44, 2009. This conclusion is based on a  
7 meta study of 1,333 children who participated in seven international studies. Lanphear, *et al.*,  
8 “Low-Level Environmental Lead Exposure and Children’s Intellectual Function: An International  
9 Pooled Analysis,” *Environmental Health Perspectives*, 113:7, 2005.

11 15. Lead exposures for pregnant women are also of particular concern in light of  
12 evidence that even short term lead exposures *in utero* may have long-term harmful effects. Hu, H.,  
13 *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
14 Development,” *Environmental Health Perspectives* 114:11,2 006; Schnaas, Lourdes, *et al.*,  
15 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*  
16 *Health Perspectives* 114:5, 2006. Increased lead exposure during pregnancy has also been shown  
17 to cause increased risk of premature birth and increased blood pressure in both the mother during  
18 pregnancy and the child after birth. Vigeh, *et al.*, “Blood Lead at Currently Acceptable Levels May  
19 Cause Preterm Labour,” *Occupational Environmental Medicine*, 68:231-234, 2010; Zhang, *et al.*,  
20 “Association Between Prenatal Lead Exposure and Blood Pressure in Children,” *Environmental*  
21 *Health Perspectives*, 120:3, 2012; Wells, *et al.*, “Low-Level Lead Exposure and Elevations in  
22 Blood Pressure During Pregnancy,” 119:5, 2011.

25 16. The level of exposure to a chemical causing reproductive toxicity under Proposition  
26 65 is determined by multiplying the level in question times the reasonably anticipated rate of

1 exposure for an individual to a given medium. 27 C.C.R. § 25821(b). For exposures to consumer  
2 products, the level of exposure is calculated using the reasonably anticipated rate of intake or  
3 exposure for average users of the consumer product. 27 C.C.R. § 25821(c)(2).

4 17. Defendant's Products contain sufficient quantities of Lead such that consumers,  
5 including pregnant women, who consume the Products are exposed to Lead. The primary route of  
6 exposure for the violations is direct ingestion when consumers orally ingest the Products. These  
7 exposures occur in homes, workplaces and everywhere else throughout California where the  
8 products are consumed.

9  
10 18. No clear and reasonable warning is provided with the Products regarding the  
11 carcinogenic or reproductive hazards of Lead.

12 19. Any person acting in the public interest has standing to enforce violations of  
13 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
14 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
15 within such time. Health & Safety Code § 25249.7(d).

16  
17 20. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff  
18 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the  
19 District Attorneys of every county in California, the City Attorneys of every California city with a  
20 population greater than 750,000 and to each of the named Defendants. In compliance with Health  
21 & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following  
22 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period  
23 during which violations occurred; (4) specific descriptions of the violations, including (a) the routes  
24 of exposure to Lead from the Products, and (b) the specific type of Products sold and used in  
25  
26

1 violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is  
2 the subject of the violations described in each Notice.

3 21. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
4 General, the District Attorneys of every county in California, the City Attorneys of every California  
5 city with a population greater than 750,000 and to each of the named Defendants. In compliance  
6 with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that  
7 Plaintiff's counsel: (1) has consulted with one or more persons with relevant and appropriate  
8 experience or expertise who reviewed facts, studies or other data regarding the exposures to Lead  
9 alleged in each Notice; and (2) based on the information obtained through such consultations,  
10 believes that there is a reasonable and meritorious case for a citizen enforcement action based on  
11 the facts alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11  
12 C.C.R. § 3102, each Certificate served on the Attorney General included factual information -  
13 provided on a confidential basis – sufficient to establish the basis for the Certificate, including the  
14 identity of the person(s) consulted by the Plaintiff's counsel and the facts, studies or other data  
15 reviewed by such persons.  
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18 22. None of the public prosecutors with the authority to prosecute violations of  
19 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 claims asserted in each of  
21 Plaintiff's Notices.  
22

23 23. Defendant both knows and intends that individuals, including pregnant women, will  
24 consume the Products, thus exposing them to Lead.

25 24. Under Proposition 65, an exposure is "knowing" where the party responsible for  
26 such exposure has:

1 knowledge of the fact that a[n] ... exposure to a chemical listed pursuant  
2 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that  
the ... exposure is unlawful is required.

3 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.,* Final  
4 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §  
5 12201).

6 25. Defendant has been informed of the Lead in their Products by the 60-Day Notice of  
7 Violation and accompanying Certificate of Merit served on them.

8 26. Defendant also has constructive knowledge that its Products contain Lead due to the  
9 widespread media coverage concerning the problem of Lead in consumer products in general.

10 27. As companies that manufacture, import, distribute and/or sell the Products for use in  
11 the California marketplace, Defendant knows or should know that the Products contain Lead and  
12 that individuals who consume the Products will be exposed to Lead. The Lead exposures to  
13 consumers who consume the Products are a natural and foreseeable consequence of Defendant's  
14 placing the Products into the stream of commerce.

15 28. Nevertheless, Defendant continues to expose consumers to Lead without prior clear  
16 and reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.

17 29. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior  
18 to filing this Complaint.

19 30. Any person "violating or threatening to violate" Proposition 65 may be enjoined in  
20 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is  
21 defined to mean "to create a condition in which there is a substantial probability that a violation  
22 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not  
23 to exceed \$2,500 per day for each violation of Proposition 65.  
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**FIRST CAUSE OF ACTION**

**(Violations of the Health & Safety Code 25249.6)**

31. Plaintiff realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 30, inclusive.

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

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

34. Defendant knows that average use of the Products will expose users of the Products to Lead. Defendant intends that the Products be used in a manner that results in exposures to Lead from the Products.

35. Defendant has failed, and continues to fail, to provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of the Products.

36. By committing the acts alleged above, Defendant has at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Lead without first giving clear and reasonable warnings to such individuals regarding the carcinogenicity and reproductive toxicity of Lead.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants as follows:

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

1           2.       That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
2 permanently enjoin Defendant from offering the Products for sale in California without either  
3 reformulating the Products such that no Proposition 65 warnings are required or providing prior  
4 clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

5           3.       That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to  
6 take action to stop ongoing unwarranted exposures to Lead resulting from use of Products sold by  
7 Defendant, as Plaintiff shall specify in further application to the Court;

8           4.       That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable  
9 theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and  
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11          5.       That the Court grant such other and further relief as may be just and proper.  
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13 Dated: March 8, 2013

PACIFIC JUSTICE CENTER

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16 By:   
17 Robert B. Hancock  
18 Attorneys for Plaintiff Class  
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