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CENTER FOR ENVIRONMENTAL HEALTH

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
Plaintiff,)
v.)
MONDELEZ INTERNATIONAL, INC.; and)
DOES 1 through 200, inclusive,)
Defendants.)

Case No. 30-2015-00817717-CU-MC-CJC
Judge Kirk Nakamura
**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**
Health & Safety Code § 25249.6, *et seq.*
(Other)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
10/30/2015 at 09:58:59 AM
Clerk of the Superior Court
By Trinity Mai, Deputy Clerk

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

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 (collectively,
7 “Lead”), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and consumption of Defendants’ cookies that contain ginger or
10 molasses (the “Products”). Consumers, including pregnant women and children, are exposed to
11 Lead when they consume the Products.

12 2. Under California’s Proposition 65, Health & Safety Code § 25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to 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, many of whom are pregnant women and
18 children, to Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and
20 other consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
21 reproductive hazards associated with Lead exposure. Defendants’ conduct thus violates the
22 warning provision of Proposition 65. Health & Safety Code § 25249.6.

23 **PARTIES**

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a
25 non-profit corporation dedicated to protecting the public from environmental health hazards and
26 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
27 State of California. CEH is a “person” within the meaning of Health & Safety Code
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1 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
2 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
3 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
4 cases have resulted in significant public benefit, including the reformulation of thousands of
5 products to remove toxic chemicals and to make them safer. CEH also provides information to
6 Californians about the health risks associated with exposure to hazardous substances, where
7 manufacturers and other responsible parties fail to do so.

8 5. Defendant MONDELEZ INTERNATIONAL, INC. is a person in the
9 course of doing business within the meaning of Health & Safety Code § 25249.11. Mondelez
10 International, Inc. manufactures, distributes and/or sells the Products for sale and use in
11 California.

12 6. DOES 1 through 200 are each a person in the course of doing business
13 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,
14 distribute and/or sell the Products for sale or use in California.

15 7. The defendant identified in Paragraphs 5 and DOES 1 through 200 are
16 collectively referred to herein as "Defendants."

17 8. The true names of DOES 1 through 200 are unknown to CEH at this time
18 or were unknown when CEH issued the 60-Day Notice of Violation of Proposition 65 to
19 Mondelez International, Inc. When their identities are ascertained or the applicable 60-Day
20 Notice runs, the Complaint shall be amended to reflect their true names.

21 **JURISDICTION AND VENUE**

22 9. The Court has jurisdiction over this action pursuant to Health & Safety
23 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
24 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
25 to other trial courts.

26 10. This Court has jurisdiction over Defendants because each is a business
27 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
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1 intentionally avails itself of the California market through the sale, marketing or use of the
2 Products in California and/or by having such other contacts with California so as to render the
3 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
4 play and substantial justice.

5 11. Venue is proper in Orange County Superior Court because one or more of
6 the violations arise in the County of Orange.

7 **BACKGROUND FACTS**

8 12. The People of the State of California have declared by initiative under
9 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
10 defects, or other reproductive harm.” Proposition 65, § 1(b).

11 13. To effectuate this goal, Proposition 65 prohibits exposing people to
12 chemicals listed by the State of California as known to cause cancer, birth defects or other
13 reproductive harm above certain levels without a “clear and reasonable warning” unless the
14 business responsible for the exposure can prove that it fits within a statutory exemption. Health
15 & Safety Code § 25249.6 states, in pertinent part:

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

20 14. On February 27, 1987, the State of California officially listed lead as a
21 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
22 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
23 the developing fetus, “female reproductive toxicity,” which means harm to the female
24 reproductive system, and “male reproductive toxicity,” which means harm to the male
25 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,
26 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
27 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
28 under Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

1 15. On October 1, 1992, the State of California officially listed lead and lead
2 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
3 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
4 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
5 § 27001(c); Health & Safety Code § 25249.10(b).

6 16. There is no safe level of exposure to Lead and even minute amounts of
7 Lead have been proven harmful to children and adults. *See* Report of the Advisory Committee
8 on Childhood Lead Poisoning Prevention of the Centers For Disease Control and Prevention,
9 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January
10 4, 2012. A study performed by the California Office of Environmental Health Hazard
11 Assessment determined that exposures to Lead even at levels previously considered safe have
12 now been shown to cause adverse health effects including reduced cognitive ability and
13 significant diminution of intellectual potential. Carlisle, *et al.*, “A Blood Lead Benchmark for
14 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science and Health*,
15 44, 2009. This conclusion is based on a meta study of 1,333 children who participated in seven
16 international studies. Lanphear, *et al.*, “Low-Level Environmental Lead Exposure and Children’s
17 Intellectual Function: An International Pooled Analysis,” *Environmental Health Perspectives*,
18 113:7, 2005.

19 17. Young children are especially susceptible to the toxic effects of Lead.
20 Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from
21 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
22 absorb and retain more Lead in proportion to their weight than do adults. Young children also
23 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
24 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
25 small doses received in childhood, over time, can cause adverse health impacts, including but not
26 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
27 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
28 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

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

13 19. The level of exposure to a chemical causing reproductive toxicity under
14 Proposition 65 is determined by multiplying the level in question times the reasonably
15 anticipated rate of exposure for an individual to a given medium. 27 C.C.R. § 25821(b). For
16 exposures to consumer products, the level of exposure is calculated using the reasonably
17 anticipated rate of intake or exposure for average users of the consumer product. 27 C.C.R. §
18 25821(c)(2). The rate of intake or exposure is based on data for use of a general category or
19 categories of consumer products, such as the United States Department of Agriculture’s
20 (“USDA”) Home Economic Research Report, “Foods Commonly Eaten by Individuals: Amount
21 Per Day and Per Eating Occasion.” *Ibid.* The USDA has issued two such reports of data
22 compiled from the years 1977-1978 and 1989-1991.

23 20. The United States Food and Drug Administration (“FDA”) has
24 promulgated regulations that estimate serving sizes for a wide variety of food products based on
25 national food consumption surveys such as the USDA’s “Foods Commonly Eaten by Individuals:
26 Amount Per Day and Per Eating Occasion.” 21 C.F.R. § 101.12. These regulations are designed
27 to determine “the amount of food customarily consumed per eating occasion.” 21 C.F.R. §
28 101.12(a). The Products at issue are cookies. FDA has determined that the standard single

1 serving size for cookies such as the Products is 30 grams per serving. 21 C.F.R. § 101.12(b).
2 Based on this serving size, the Products will expose an average consumer to a significant amount
3 of Lead.

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

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

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

15 24. More than sixty days prior to naming each Defendant in this lawsuit, CEH
16 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
17 the District Attorneys of every county in California, the City Attorneys of every California city
18 with a population greater than 750,000 and to each of the named Defendants. In compliance with
19 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
20 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
21 time period during which violations occurred; (4) specific descriptions of the violations,
22 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
23 Products sold and used in violation of Proposition 65; and (5) the name of the specific
24 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

25 25. CEH also sent a Certificate of Merit for each Notice to the California
26 Attorney General, the District Attorneys of every county in California, the City Attorneys of
27 every California city with a population greater than 750,000 and to each of the named
28 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each

1 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with
2 relevant and appropriate experience or expertise who reviewed facts, studies or other data
3 regarding the exposures to Lead alleged in each Notice; and (2) based on the information
4 obtained through such consultations, believes that there is a reasonable and meritorious case for a
5 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
6 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney
7 General included factual information – provided on a confidential basis – sufficient to establish
8 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
9 and the facts, studies or other data reviewed by such persons.

10 26. None of the public prosecutors with the authority to prosecute violations
11 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
12 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
13 of CEH's Notices.

14 27. Defendants both know and intend that individuals, including pregnant
15 women and children, will consume the Products, thus exposing them to Lead.

16 28. Under Proposition 65, an exposure is "knowing" where the party
17 responsible for such exposure has:

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

21 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
22 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
23 § 12201).

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

26 30. Defendants also have constructive knowledge that their Products contain
27 Lead due to the widespread media coverage concerning the problem of Lead in consumer
28 products.

1 39. Defendants have failed, and continue to fail, to provide clear and
2 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
3 the Products.

4 40. By committing the acts alleged above, Defendants have at all times
5 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
6 individuals to Lead without first giving clear and reasonable warnings to such individuals
7 regarding the carcinogenicity and reproductive toxicity of Lead.

8 **PRAYER FOR RELIEF**

9 Wherefore, CEH prays for judgment against Defendants as follows:

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

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

18 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order
19 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
20 Products sold by Defendants, as CEH shall specify in further application to the Court;

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

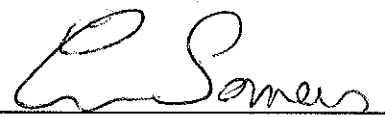
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1 5. That the Court grant such other and further relief as may be just and
2 proper.

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4 Dated: October 30, 2015

Respectfully submitted,

5 LEXINGTON LAW GROUP

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8 Eric S. Somers
9 Attorneys for Plaintiff
10 CENTER FOR ENVIRONMENTAL HEALTH

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