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6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY
AUG 23 2013
CLERK OF THE SUPERIOR COURT
By Frances Wilson Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)
14 Plaintiff,)
15 v.)
16 GENERAL MILLS, INC.; SAFEWAY INC.;)
17 TRADER JOE'S COMPANY; and DOES 1)
18 through 200, inclusive,)
19 Defendants.)

Case No.
**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**
Health & Safety Code § 25249.6, *et seq.*
(Other)

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' baking mix products that contain
10 ginger, molasses, or both ginger and molasses (the "Products"). Consumers, including pregnant
11 women and children, are exposed to 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
28

1 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
2 to other trial courts.

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

9 13. Venue is proper in Alameda County Superior Court because one or more of
10 the violations arise in the County of Alameda.

11 **BACKGROUND FACTS**

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

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

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

23 16. On February 27, 1987, the State of California officially listed lead as a
24 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
25 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
26 the developing fetus, “female reproductive toxicity,” which means harm to the female
27 reproductive system, and “male reproductive toxicity,” which means harm to the male
28 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,

1 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
2 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
3 under Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

4 17. On October 1, 1992, the State of California officially listed lead and lead
5 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
6 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
7 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
8 § 27001(c); Health & Safety Code § 25249.10(b).

9 18. There is no safe level of exposure to Lead and even minute amounts of
10 Lead have been proven harmful to children and adults. *See* Report of the Advisory Committee
11 on Childhood Lead Poisoning Prevention of the Centers For Disease Control and Prevention,
12 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January
13 4, 2012. A study performed by the California Office of Environmental Health Hazard
14 Assessment determined that exposures to Lead even at levels previously considered safe have
15 now been shown to cause adverse health effects including reduced cognitive ability and
16 significant diminution of intellectual potential. Carlisle, *et al.*, “A Blood Lead Benchmark for
17 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science and Health*,
18 44, 2009. This conclusion is based on a meta study of 1,333 children who participated in seven
19 international studies. Lanphear, *et al.*, “Low-Level Environmental Lead Exposure and Children’s
20 Intellectual Function: An International Pooled Analysis,” *Environmental Health Perspectives*,
21 113:7, 2005.

22 19. Young children are especially susceptible to the toxic effects of Lead.
23 Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from
24 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
25 absorb and retain more Lead in proportion to their weight than do adults. Young children also
26 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
27 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
28 small doses received in childhood, over time, can cause adverse health impacts, including but not

1 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
2 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
3 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

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

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

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

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

27 24. More than sixty days prior to naming each Defendant in this lawsuit, CEH
28 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,

1 the District Attorneys of every county in California, the City Attorneys of every California city
2 with a population greater than 750,000 and to each of the named Defendants. In compliance with
3 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
4 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
5 time period during which violations occurred; (4) specific descriptions of the violations,
6 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
7 Products sold and used in violation of Proposition 65; and (5) the name of the specific
8 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

9 25. CEH also sent a Certificate of Merit for each Notice to the California
10 Attorney General, the District Attorneys of every county in California, the City Attorneys of
11 every California city with a population greater than 750,000 and to each of the named
12 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each
13 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with
14 relevant and appropriate experience or expertise who reviewed facts, studies or other data
15 regarding the exposures to Lead alleged in each Notice; and (2) based on the information
16 obtained through such consultations, believes that there is a reasonable and meritorious case for a
17 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
18 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney
19 General included factual information -- provided on a confidential basis -- sufficient to establish
20 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
21 and the facts, studies or other data reviewed by such persons.

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

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

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1 28. Under Proposition 65, an exposure is “knowing” where the party
2 responsible for such exposure has:

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

6 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
7 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
8 § 12201).

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

11 30. Defendants also have constructive knowledge that their Products contain
12 Lead due to widespread industry knowledge regarding Lead in both molasses and ginger.

13 31. As companies that manufacture, import, distribute and/or sell the Products
14 for use in the California marketplace, Defendants know or should know that the Products contain
15 Lead and that individuals who consume the Products will be exposed to Lead. The Lead
16 exposures to consumers who consume the Products are a natural and foreseeable consequence of
17 Defendants’ placing the Products into the stream of commerce.

18 32. Nevertheless, Defendants continue to expose consumers, including
19 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the
20 carcinogenic or reproductive hazards of Lead.

21 33. CEH has engaged in good faith efforts to resolve the claims alleged herein
22 prior to filing this Complaint.

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

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

3 35. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 34, inclusive.

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

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

9 38. Defendants know that average use of the Products will expose users of the
10 Products to Lead. Defendants intend that the Products be used in a manner that results in
11 exposures to Lead from the Products.

12 39. Defendants have failed, and continue to fail, to provide clear and
13 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
14 the Products.

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

19 **PRAYER FOR RELIEF**

20 CEH prays for judgment against Defendants as follows:

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

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

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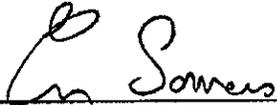
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by Defendants, as CEH shall specify in further application to the Court;

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 of suit; and

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

Dated: August 23, 2013

Respectfully submitted,
LEXINGTON LAW GROUP


Eric S. Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

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8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and consumption of Defendants' baking mix products that contain
10 ginger, molasses, or both ginger and molasses (the "Products"). Consumers, including pregnant
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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 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
2 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
3 under Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

4 17. On October 1, 1992, the State of California officially listed lead and lead
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14 Assessment determined that exposures to Lead even at levels previously considered safe have
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22 19. Young children are especially susceptible to the toxic effects of Lead.
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18 significant amount of Lead. The primary route of exposure for the violations is direct ingestion
19 when consumers eat the Products. These exposures occur in homes, workplaces and everywhere
20 else throughout California where the products are consumed.

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

23 23. Any person acting in the public interest has standing to enforce violations
24 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
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16 obtained through such consultations, believes that there is a reasonable and meritorious case for a
17 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
18 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney
19 General included factual information – provided on a confidential basis – sufficient to establish
20 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
21 and the facts, studies or other data reviewed by such persons.

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

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

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16 exposures to consumers who consume the Products are a natural and foreseeable consequence of
17 Defendants' placing the Products into the stream of commerce.

18 32. Nevertheless, Defendants continue to expose consumers, including
19 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the
20 carcinogenic or reproductive hazards of Lead.

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

3 35. CEH realleges and incorporates by reference as if specifically set forth
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11 exposures to Lead from the Products.

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14 the Products.

15 40. By committing the acts alleged above, Defendants have at all times
16 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
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18 regarding the carcinogenicity and reproductive toxicity of Lead.

19 **PRAAYER FOR RELIEF**

20 CEH prays for judgment against Defendants as follows:

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

24 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
25 preliminarily and permanently enjoin Defendants from offering the Products for sale in
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27 required or providing prior clear and reasonable warnings, as CEH shall specify in further
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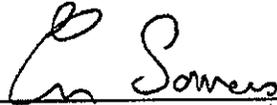
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4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: August 23, 2013

Respectfully submitted,
LEXINGTON LAW GROUP


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