

ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

By Rosa-Angela Snock Deputy

1 LEXINGTON LAW GROUP
Eric S. Somers, State Bar No. 139050
2 Lucas Williams, State Bar No. 264518
503 Divisadero Street
3 San Francisco, CA 94117
Telephone: (415) 913-7800
4 Facsimile: (415) 759-4112
esomers@lexlawgroup.com
5 lwilliams@lexlawgroup.com

6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
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12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 KOOKABURRA LICORICE COMPANY;)
17 AMAZON.COM, INC.; JELLY BELLY)
18 CANDY COMPANY; KING REGAL, SA;)
19 SWEET CANDY, LLC; TANGERINE)
CONFECTIONERY LTD.; and DOES 1 through)
200, inclusive,)

20 Defendants.)
21

Case No. RG14733545

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 information
2 and belief and investigation of counsel, except for information based on knowledge, hereby
3 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' licorice flavored candy (the
10 "Products"). Consumers, including pregnant women and children, are exposed to Lead when
11 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 § 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 KOOKABURRA LICORICE COMPANY is a person in the
9 course of doing business within the meaning of Health & Safety Code § 25249.11. Kookaburra
10 Licorice Company manufactures, distributes and/or sells the Products for sale and use in
11 California.

12 6. Defendant AMAZON.COM, INC. is a person in the course of doing
13 business within the meaning of Health & Safety Code § 25249.11. Amazon.com, Inc.
14 manufactures, distributes and/or sells the Products for sale and use in California.

15 7. Defendant JELLY BELLY CANDY COMPANY is a person in the course
16 of doing business within the meaning of Health & Safety Code § 25249.11. Jelly Belly Candy
17 Company manufactures, distributes and/or sells the Products for sale and use in California.

18 8. Defendant KING REGAL, SA is a person in the course of doing business
19 within the meaning of Health & Safety Code § 25249.11. King Regal, SA manufactures,
20 distributes and/or sells the Products for sale and use in California.

21 9. Defendant SWEET CANDY, LLC is a person in the course of doing
22 business within the meaning of Health & Safety Code § 25249.11. Sweet Candy, LLC
23 manufactures, distributes and/or sells the Products for sale and use in California.

24 10. Defendant TANGERINE CONFECTIONERY LTD. is a person in the
25 course of doing business within the meaning of Health & Safety Code § 25249.11. Tangerine
26 Confectionery Ltd. manufactures, distributes and/or sells the Products for sale and use in
27 California.

28 11. DOES 1 through 200 are each a person in the course of doing business

1 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,
2 distribute and/or sell the Products for sale or use in California.

3 12. The defendants identified in paragraphs 5 through 10 and DOES 1 through
4 200 are collectively referred to herein as “Defendants.”

5 13. The true names of DOES 1 through 200 are unknown to CEH at this time
6 or were unknown when CEH issued the 60-Day Notice of Violation of Proposition 65 to
7 Kookaburra Licorice Company. When their identities are ascertained or the applicable 60-Day
8 Notice of Violation of Proposition 65 runs, the Complaint shall be amended to reflect their true
9 names.

10 JURISDICTION AND VENUE

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

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

21 16. Venue is proper in Alameda County Superior Court because one or more of
22 the violations arise in the County of Alameda.

23 BACKGROUND FACTS

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

27 18. To effectuate this goal, Proposition 65 prohibits exposing people to
28 chemicals listed by the State of California as known to cause cancer, birth defects or other

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

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

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

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

21 21. There is no safe level of exposure to Lead and even minute amounts of
22 Lead have been proven harmful to children and adults. *See* Report of the Advisory Committee
23 on Childhood Lead Poisoning Prevention of the Centers For Disease Control and Prevention,
24 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January
25 4, 2012. A study performed by the California Office of Environmental Health Hazard
26 Assessment determined that exposures to Lead even at levels previously considered safe have
27 now been shown to cause adverse health effects including reduced cognitive ability and
28 significant diminution of intellectual potential. Carlisle, *et al.*, “A Blood Lead Benchmark for

1 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science and Health*,
2 44, 2009. This conclusion is based on a meta study of 1,333 children who participated in seven
3 international studies. Lanphear, *et al.*, “Low-Level Environmental Lead Exposure and Children’s
4 Intellectual Function: An International Pooled Analysis,” *Environmental Health Perspectives*,
5 113:7, 2005.

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

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

28 24. Defendants’ Products contain sufficient quantities of Lead such that

1 consumers, including pregnant women and children, who consume the Products are exposed to a
2 significant amount of Lead. The primary route of exposure for the violations is direct ingestion
3 when consumers eat the Products. These exposures occur in homes, workplaces and everywhere
4 else throughout California where the products are consumed.

5 25. No clear and reasonable warning is provided with the Products regarding
6 the carcinogenic or reproductive hazards of Lead.

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

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

21 28. CEH also sent a Certificate of Merit for each Notice to the California
22 Attorney General, the District Attorneys of every county in California, the City Attorneys of
23 every California city with a population greater than 750,000 and to each of the named
24 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each
25 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with
26 relevant and appropriate experience or expertise who reviewed facts, studies or other data
27 regarding the exposures to Lead alleged in each Notice; and (2) based on the information
28 obtained through such consultations, believes that there is a reasonable and meritorious case for a

1 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
2 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney
3 General included factual information – provided on a confidential basis – sufficient to establish
4 the basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel
5 and the facts, studies or other data reviewed by such persons.

6 29. None of the public prosecutors with the authority to prosecute violations
7 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
8 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
9 of CEH’s Notices.

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

12 31. Under Proposition 65, an exposure is “knowing” where the party
13 responsible for such exposure has:

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

17 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
18 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
19 § 12201).

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

22 33. Defendants also have constructive knowledge that their Products contain
23 Lead due to the widespread industry knowledge regarding Lead in both molasses and licorice
24 root.

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

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PRAYER FOR RELIEF

Wherefore, CEH 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 Defendants in the amount of \$2,500 per day for each violation of Proposition 65 according to proof;

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

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: July 18, 2014

Respectfully submitted,

LEXINGTON LAW GROUP


Eric Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH