

1 LEXINGTON LAW GROUP  
 Eric S. Somers, State Bar No. 139050  
 2 Lucas Williams, State Bar No. 264518  
 Abigail Blodgett, State Bar No. 278813  
 3 503 Divisadero Street  
 San Francisco, CA 94117  
 4 Telephone: (415) 913-7800  
 Facsimile: (415) 759-4112  
 5 esomers@lexlawgroup.com  
 lwilliams@lexlawgroup.com  
 6 ablodgett@lexlawgroup.com

7 Attorneys for Plaintiff  
 CENTER FOR ENVIRONMENTAL HEALTH

**FILED BY FAX**

ALAMEDA COUNTY

August 03, 2015

CLERK OF  
THE SUPERIOR COURT  
By Burt Moskaira, Deputy

CASE NUMBER:

**RG13677800**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

11 CENTER FOR ENVIRONMENTAL HEALTH, )  
12 a non-profit corporation, )

13 Plaintiff, )

14 v. )

15 MONDELEZ INTERNATIONAL, INC.; )  
 PANOS BRANDS, LLC; SAFEWAY INC.; )  
 16 TRADER JOE'S COMPANY; ANNIE'S, INC.; )  
 ANNIE'S HOMEGROWN INC.; BERKELEY )  
 17 BOWL PRODUCE, INC.; COMMERCIAL )  
 BAKERIES CORP.; DEWEY'S BAKERY, )  
 18 INC.; FANTASY COOKIE CORPORATION; )  
 FEHR FOODS, INC.; GRAIN MILLERS, INC.; )  
 19 J & J SNACK FOODS SALES CORP.; J & J )  
 SNACK FOODS CORP. OF CALIFORNIA; )  
 20 THE KROGER CO.; LOVIN OVEN, LLC; )  
 NEW CENTURY HOLDINGS, INC.; )  
 21 RALCORP HOLDINGS, INC.; SALEM )  
 BAKING COMPANY, INC.; SAVE MART )  
 22 SUPERMARKETS; SPECIALTY'S CAFÉ & )  
 BAKERY, INC.; THREE J'S DISTRIBUTING, )  
 23 INC.; TOPCO ASSOCIATES, LLC; )  
 TRADITIONAL BAKING, INC.; UNITED )  
 24 STATES BAKERY; VITACOST.COM, INC.; )  
 WHOLE FOODS MARKET CALIFORNIA, )  
 25 INC.; WINCO FOODS, LLC; and DOES 24 )  
 through 200, inclusive, )

26 Defendants. )

Case No. RG 13-677800

Assigned for all purposes to Judge George  
C. Hernandez, Jr. Department 17

**SECOND AMENDED COMPLAINT  
FOR INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

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

5 **INTRODUCTION**

6 1. This Complaint seeks to remedy Defendants' continuing failure to warn  
7 individuals in California that they are being exposed to lead and lead compounds (collectively,  
8 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other  
9 reproductive harm. Such exposures have occurred, and continue to occur, through the  
10 manufacture, distribution, sale and consumption of Defendants' cookies that contain ginger or  
11 molasses (the "Products"). Consumers, including pregnant women and children, are exposed to  
12 Lead when they consume the Products.

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

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

24 **PARTIES**

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
26 non-profit corporation dedicated to protecting the public from environmental health hazards and  
27 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the  
28 State of California. CEH is a "person" within the meaning of Health & Safety Code

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. Defendant PANOS BRANDS, LLC is a person in the course of doing  
13 business within the meaning of Health & Safety Code § 25249.11. Panos Brands, LLC  
14 manufactures, distributes and/or sells the Products for sale and use in California.

15           7. Defendant SAFEWAY INC. is a person in the course of doing business  
16 within the meaning of Health & Safety Code § 25249.11. Safeway Inc. manufactures, distributes  
17 and/or sells the Products for sale and use in California.

18           8. Defendant TRADER JOE'S COMPANY is a person in the course of  
19 doing business within the meaning of Health & Safety Code § 25249.11. Trader Joe's Company  
20 manufactures, distributes and/or sells the Products for sale and use in California.

21           9. Defendant ANNIE'S, INC. is a person in the course of doing business  
22 within the meaning of Health & Safety Code § 25249.11. Annie's, Inc. manufactures, distributes  
23 and/or sells the Products for sale and use in California.

24           10. Defendant ANNIE'S HOMEGROWN INC. is a person in the course of  
25 doing business within the meaning of Health & Safety Code § 25249.11. Annie's Homegrown,  
26 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

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1           11. Defendant BERKELEY BOWL PRODUCE, INC. is a person in the course  
2 of doing business within the meaning of Health & Safety Code § 25249.11. Berkeley Bowl  
3 Produce, Inc. manufactures, distributes and/or sells the Products for sale and use in California.

4           12. Defendant COMMERCIAL BAKERIES CORP. is a person in the course  
5 of doing business within the meaning of Health & Safety Code § 25249.11. Commercial  
6 Bakeries Corp. manufactures, distributes and/or sells the Products for sale and use in California.

7           13. Defendant DEWEY'S BAKERY, INC. is a person in the course of doing  
8 business within the meaning of Health & Safety Code § 25249.11. Dewey's Bakery, Inc.  
9 manufactures, distributes and/or sells the Products for sale and use in California.

10           14. Defendant FANTASY COOKIE CORPORATION is a person in the  
11 course of doing business within the meaning of Health & Safety Code § 25249.11. Fantasy  
12 Cookie Corporation manufactures, distributes and/or sells the Products for sale and use in  
13 California.

14           15. Defendant FEHR FOODS, INC. is a person in the course of doing  
15 business within the meaning of Health & Safety Code § 25249.11. Fehr Foods, Inc.  
16 manufactures, distributes and/or sells the Products for sale and use in California.

17           16. Defendant GRAIN MILLERS, INC. is a person in the course of doing  
18 business within the meaning of Health & Safety Code § 25249.11. Grain Millers, Inc.  
19 manufactures, distributes and/or sells the Products for sale and use in California.

20           17. Defendant J & J SNACK FOODS SALES CORP. is a person in the course  
21 of doing business within the meaning of Health & Safety Code § 25249.11. J & J Snack Foods  
22 Sales Corp. manufactures, distributes and/or sells the Products for sale and use in California.

23           18. Defendant J & J SNACK FOODS CORP. OF CALIFORNIA is a person  
24 in the course of doing business within the meaning of Health & Safety Code § 25249.11. J & J  
25 Snack Foods Corp. of California manufactures, distributes and/or sells the Products for sale and  
26 use in California.

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1           19. Defendant THE KROGER CO. is a person in the course of doing business  
2 within the meaning of Health & Safety Code § 25249.11. The Kroger Co. manufactures,  
3 distributes and/or sells the Products for sale and use in California.

4           20. Defendant LOVIN OVEN, LLC is a person in the course of doing business  
5 within the meaning of Health & Safety Code § 25249.11. Lovin Oven, LLC manufactures,  
6 distributes and/or sells the Products for sale and use in California.

7           21. Defendant NEW CENTURY HOLDINGS, INC. is a person in the course  
8 of doing business within the meaning of Health & Safety Code § 25249.11. New Century  
9 Holdings, Inc. manufactures, distributes and/or sells the Products for sale and use in California.

10          22. Defendant RALCORP HOLDINGS, INC. is a person in the course of  
11 doing business within the meaning of Health & Safety Code § 25249.11. Ralcorp Holdings, Inc.  
12 manufactures, distributes and/or sells the Products for sale and use in California.

13          23. Defendant SAVE MART SUPERMARKETS is a person in the course of  
14 doing business within the meaning of Health & Safety Code § 25249.11. Save Mart  
15 Supermarkets manufactures, distributes and/or sells the Products for sale and use in California.

16          24. Defendant SALEM BAKING COMPANY, INC. is a person in the course  
17 of doing business within the meaning of Health & Safety Code § 25249.11. Salem Baking  
18 Company, Inc. manufactures, distributes and/or sells the Products for sale and use in California.

19          25. Defendant SPECIALTY'S CAFE & BAKERY, INC. is a person in the  
20 course of doing business within the meaning of Health & Safety Code § 25249.11. Specialty's  
21 Cafe & Bakery, Inc. manufactures, distributes and/or sells the Products for sale and use in  
22 California.

23          26. Defendant THREE J'S DISTRIBUTING, INC. is a person in the course of  
24 doing business within the meaning of Health & Safety Code § 25249.11. Three J's Distributing,  
25 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

26          27. Defendant TOPCO ASSOCIATES, LLC is a person in the course of doing  
27 business within the meaning of Health & Safety Code § 25249.11. Topco Associates, LLC  
28 manufactures, distributes and/or sells the Products for sale and use in California.

1           28. Defendant TRADITIONAL BAKING, INC. is a person in the course of  
2 doing business within the meaning of Health & Safety Code § 25249.11. Traditional Baking,  
3 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

4           29. Defendant UNITED STATES BAKERY is a person in the course of doing  
5 business within the meaning of Health & Safety Code § 25249.11. United States Bakery  
6 manufactures, distributes and/or sells the Products for sale and use in California.

7           30. Defendant VITACOST.COM, INC. is a person in the course of doing  
8 business within the meaning of Health & Safety Code § 25249.11. Vitacost.com, Inc.  
9 manufactures, distributes and/or sells the Products for sale and use in California.

10          31. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. is a person  
11 in the course of doing business within the meaning of Health & Safety Code § 25249.11. Whole  
12 Foods Market California, Inc. manufactures, distributes and/or sells the Products for sale and use  
13 in California.

14          32. Defendant WINCO FOODS, LLC is a person in the course of doing  
15 business within the meaning of Health & Safety Code § 25249.11. Winco Foods, LLC  
16 manufactures, distributes and/or sells the Products for sale and use in California.

17          33. DOES 24 through 200 are each a person in the course of doing business  
18 within the meaning of Health & Safety Code § 25249.11. DOES 24 through 200 manufacture,  
19 distribute and/or sell the Products for sale or use in California.

20          34. The defendants identified in Paragraphs 5 through 32 and DOES 24  
21 through 200 are collectively referred to herein as “Defendants.”

22          35. The true names of DOES 24 through 200 are unknown to CEH at this time  
23 or were unknown when CEH issued the 60-Day Notice of Violation of Proposition 65 to  
24 Mondelez International, Inc. When their identities are ascertained or the applicable 60-Day  
25 Notice runs, the Complaint shall be amended to reflect their true names.

26                           **JURISDICTION AND VENUE**

27          36. The Court has jurisdiction over this action pursuant to Health & Safety  
28 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant

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

3 37. 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 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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           45.     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*  
9 *Health Perspectives* 114:5, 2006. Increased lead exposure during pregnancy has also been shown  
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           46.     The level of exposure to a chemical causing reproductive toxicity under  
17 Proposition 65 is determined by multiplying the level in question times the reasonably  
18 anticipated rate of exposure for an individual to a given medium. 27 C.C.R. § 25821(b). For  
19 exposures to consumer products, the level of exposure is calculated using the reasonably  
20 anticipated rate of intake or exposure for average users of the consumer product. 27 C.C.R. §  
21 25821(c)(2). The rate of intake or exposure is based on data for use of a general category or  
22 categories of consumer products, such as the United States Department of Agriculture’s  
23 (“USDA”) Home Economic Research Report, “Foods Commonly Eaten by Individuals: Amount  
24 Per Day and Per Eating Occasion.” *Ibid.* The USDA has issued two such reports of data  
25 compiled from the years 1977-1978 and 1989-1991.

26           47.     The United States Food and Drug Administration (“FDA”) has  
27 promulgated regulations that estimate serving sizes for a wide variety of food products based on  
28 national food consumption surveys such as the USDA’s “Foods Commonly Eaten by Individuals:

1 Amount Per Day and Per Eating Occasion.” 21 C.F.R. § 101.12. These regulations are designed  
2 to determine “the amount of food customarily consumed per eating occasion.” 21 C.F.R. §  
3 101.12(a). The Products at issue are cookies. FDA has determined that the standard single  
4 serving size for cookies such as the Products is 30 grams per serving. 21 C.F.R. § 101.12(b).  
5 Based on this serving size, the Products will expose an average consumer to a significant amount  
6 of Lead.

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

12 49. No clear and reasonable warning is provided with the Products regarding  
13 the carcinogenic or reproductive hazards of Lead.

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

18 51. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
19 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
20 the District Attorneys of every county in California, the City Attorneys of every California city  
21 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
22 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
23 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
24 time period during which violations occurred; (4) specific descriptions of the violations,  
25 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of  
26 Products sold and used in violation of Proposition 65; and (5) the name of the specific  
27 Proposition 65-listed chemical that is the subject of the violations described in each Notice.  
28

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

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

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

20           55.     Under Proposition 65, an exposure is “knowing” where the party  
21 responsible for such exposure has:

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

25           27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
26 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
27 § 12201).





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

Dated: August 3, 2015

Respectfully submitted,  
LEXINGTON LAW GROUP



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Abigail Blodgett  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH