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ENDORSED
FILED
ALAMEDA COUNTY

JUL 01 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, 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 VINH-SANH TRADING CORPORATION;)
17 TAWA SUPERMARKET, INC.; TAWA)
CALIFORNIA SUPERMARKET, INC.;)
18 WELCOME MARKET, INC.; and DOES 1)
through 200, inclusive,)

19 Defendants.)
20

Case No. RG 15776331

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 cadmium, a chemical known to the State
7 of California to cause birth defects and other reproductive harm. Such exposures have occurred,
8 and continue to occur, through the manufacture, distribution, sale and consumption of rice
9 noodles that are sold by Defendants (the "Products"). Individuals, including pregnant women
10 and children, are exposed to cadmium when they consume the Products.

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

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

22 **PARTIES**

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
24 non-profit corporation dedicated to protecting the public from environmental health hazards and
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
26 State of California. CEH is a "person" within the meaning of Health & Safety Code
27 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
28 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy

1 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
2 cases have resulted in significant public benefit, including the reformulation of thousands of
3 products to remove toxic chemicals to make them safer. CEH also provides information to
4 Californians about the health risks associated with exposure to hazardous substances, where
5 manufacturers and other responsible parties fail to do so.

6 5. Defendant VINH-SANH TRADING CORPORATION is a person in the
7 course of doing business within the meaning of Health & Safety Code § 25249.11. Vinh-Sanh
8 Trading Corporation manufactures, distributes and/or sells the Products for sale and use in
9 California.

10 6. Defendant TAWA SUPERMARKET, INC. is a person in the course of
11 doing business within the meaning of Health & Safety Code § 25249.11. Tawa Supermarket,
12 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

13 7. Defendant TAWA CALIFORNIA SUPERMARKET, INC. is a person in
14 the course of doing business within the meaning of Health & Safety Code § 25249.11. Tawa
15 California Supermarket, Inc. manufactures, distributes and/or sells the Products for sale and use
16 in California.

17 8. Defendant WELCOME MARKET, INC. is a person in the course of doing
18 business within the meaning of Health & Safety Code § 25249.11. Welcome Market, Inc.
19 manufactures, distributes and/or sells the Products for sale and use in California.

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

23 10. The defendants identified in Paragraphs 5 through 8 and DOES 1 through
24 200 are collectively referred to herein as "Defendants."

25 11. The true names of DOES 1 through 200 are unknown to CEH at this time.
26 When their identities are ascertained or the applicable 60-Day Notice of Violation of Proposition
27 65 runs, the Complaint shall be amended to reflect their true names.

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1 **JURISDICTION AND VENUE**

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

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

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

14 **BACKGROUND FACTS**

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

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

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

26 17. On May 1, 1997, the State of California officially listed cadmium as a
27 chemical known to cause reproductive toxicity. Cadmium became subject to the Proposition 65
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1 “clear and reasonable” reproductive toxicity warning one year later beginning on May 1, 1998.
2 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

3 18. Cadmium in food products is of particular concern in light of evidence that
4 cadmium exposure has the potential to negatively impact reproduction and embryonic
5 development in several different ways and at every stage of the reproductive process. *See, e.g.,*
6 Thompson, J., *et al.*, “Review: Cadmium: Toxic Effects on the Reproductive System and the
7 Embryo,” *Reproductive Toxicology* (February 2008) Vol. 25:304; *see also* Ji, Yan-Li, *et al.*,
8 “Pubertal Cadmium Exposure Impairs Testicular Development and Spermatogenesis via
9 Disrupting Testicular Testosterone Synthesis in Adult Mice,” *Reproductive Toxicology* (accepted
10 for publication October 2009) (even low levels of cadmium accumulation in semen may
11 contribute to male infertility). In addition, a recent study found that children are especially at risk
12 of experiencing adverse health effects from consuming rice containing cadmium. *See* Ke, Shen
13 *et al.*, “Cadmium Contamination of Rice from Various Polluted Areas of China and its Potential
14 Risks to Human Health,” *Environmental Monitoring & Assessment* (June 2015) Vol. 187:408.
15 Likewise, the World Health Organization calls cadmium a “major public health concern” as it
16 “exerts toxic effects on the kidney, the skeletal system and the respiratory system”
17 International Programme on Chemical Safety, World Health Organization, “Exposure to
18 Cadmium: A Major Public Health Concern,” (2010).

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

24 20. No clear and reasonable warning is provided with the Products regarding
25 the reproductive hazards of cadmium.

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

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

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

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

3 25. Defendants both know and intend that individuals, including pregnant
4 women and children, will consume the Products, thus exposing them to cadmium.

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

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

10 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
11 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
12 § 12201).

13 27. Defendants have been informed of the cadmium in their Products by the
14 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

15 28. Defendants also have constructive knowledge that their Products contain
16 cadmium due to the widespread industry knowledge and media coverage concerning the problem
17 of cadmium in rice products.

18 29. As companies that manufacture, import, distribute and/or sell the Products
19 for use in the California marketplace, Defendants know or should know that the Products contain
20 cadmium and that individuals who consume the Products will be exposed to cadmium. The
21 cadmium exposures to individuals who consume the Products are a natural and foreseeable
22 consequence of Defendants' placing the Products into the stream of commerce.

23 30. Nevertheless, Defendants continue to expose individuals, including
24 pregnant women and children, to cadmium without prior clear and reasonable warnings regarding
25 the reproductive hazards of cadmium.

26 31. CEH has engaged in good faith efforts to resolve the claims alleged herein
27 prior to filing this Complaint.
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1 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
2 preliminarily and permanently enjoin Defendants from offering the Products for sale in
3 California without either reformulating the Products such that no Proposition 65 warnings are
4 required or providing prior clear and reasonable warnings, as CEH shall specify in further
5 application to the Court;

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

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

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

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14 Dated: July 1, 2015

Respectfully submitted,

LEXINGTON LAW GROUP

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Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

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