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FILED
San Francisco County Superior Court

SEP 11 2017

CLERK OF THE COURT
BY: Chalene Tabris
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

EDEN FOODS, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. CGC-17-561227
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 et seq.)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Whitney R. Leeman,
3 Ph.D. in the public interest of the citizens of the State of California to enforce the People's right to
4 be informed of the health hazards caused by exposures to lead, a toxic chemical found in dried teas
5 sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
7 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,
8 who purchase and consume defendants' products, about the risks of exposure to lead present in and
9 on the dried teas that defendants manufacture, distribute and offer for sale or consumption
10 throughout the State of California. Individuals not covered by California's Occupational Safety
11 Health Act, Labor Code § 6300 et seq., who purchase and consume defendants' products, are
12 referred to hereinafter as "consumers."

13 3. Detectable levels of lead are found in and on the dried teas that defendants
14 manufacture, distribute, and offer for sale to consumers throughout California.

15 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
16 Health and Safety Code § 25249.6 et seq. (Proposition 65), "[n]o person in the course of doing
17 business shall knowingly and intentionally expose any individual to a chemical known to the state to
18 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
19 individual . . ." Health & Safety Code § 25249.6.

20 5. Pursuant to Proposition 65, on February 27, 1987, California listed lead as a chemical
21 known to cause birth defects or reproductive harm. Lead became subject to the "clear and
22 reasonable warning" requirements of the act one year later on February 27, 1988. Cal. Code Regs.
23 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
25 hazard warnings in California, dried teas containing lead including, but not limited to, *Eden Organic*
26 *Kukicha Twig Tea, UPC #0 24182 18120 3*. All such dried teas containing lead are referred to
27 collectively hereinafter as "PRODUCTS."
28

1 future.

2 29. After receiving plaintiff's sixty-day notice of violation, no public enforcement agency
3 has commenced and diligently prosecuted a cause of action against DEFENDANTS under
4 Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of violation.

5 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
6 for sale or consumption in California cause exposures to lead as a result of the reasonably
7 foreseeable consumption of the PRODUCTS. Such exposures caused by DEFENDANTS and
8 endured by consumers and other individuals in California are not exempt from the "clear and
9 reasonable" warning requirements of Proposition 65.

10 31. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
11 distribute, sell, and offer for sale in California contain lead.

12 32. Lead is present in or on the PRODUCTS in such a way as to expose consumers
13 through ingestion during reasonably foreseeable consumption.

14 33. The normal and reasonably foreseeable consumption of the PRODUCTS has caused,
15 and continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of
16 Regulations, section 25602(b).

17 34. DEFENDANTS know that the normal and reasonably foreseeable consumption of the
18 PRODUCTS exposes individuals to lead through ingestion.

19 35. DEFENDANTS intend exposures to lead from the reasonably foreseeable
20 consumption of the PRODUCTS will occur by their deliberate, non-accidental participation in the
21 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale to consumers
22 in California.

23 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
24 in California who have been, or will be, exposed to lead through ingestion resulting from their
25 consumption of the PRODUCTS.

26 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, consumers exposed to lead through ingestion as a result of their
28 consumption of the PRODUCTS that DEFENDANTS sell without a "clear and reasonable" health

1 hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain,
2 speedy, or adequate remedy at law.

3 38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
4 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
5 per day for each violation.

6 39. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
7 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

10 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties
11 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

12 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
13 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
14 for sale or consumption in California without a “clear and reasonable warning” in accordance with
15 title 27 of the California Code of Regulations, section 25601 et seq., regarding the harms associated
16 with exposures to lead;

17 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary
18 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
19 chain of commerce in California without a “clear and reasonable warning” as defined by California
20 Code of Regulations title 27, section 25601 et seq.;

21 4. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

23 Dated: September 11, 2017

24 Respectfully submitted,
25 THE CHANLER GROUP

26 By: 

27 Brian Johnson
28 Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.