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ENDORSED
FILED
ALAMEDA COUNTY

JAN 09 2019

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

RG190061951

13 CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

14 Plaintiff,

15 v.

16
17 TOTAL SWEETENERS, INC.; AMERIFOODS
TRADING COMPANY LLC; BARKMAN
18 HONEY, LLC; JFC INTERNATIONAL, INC.;
NATURAL AMERICAN FOODS, INC.; SMART
19 & FINAL STORES LLC; and DOES 1 through
200, inclusive,

20 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 information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' failure to warn individuals in
6 California that they are being exposed to lead and lead compounds (collectively, "Lead"),
7 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, when people consume
9 molasses that is sold by Defendants as a finished product ("Molasses"). Consumers, including
10 pregnant women and children, are exposed to Lead when they consume Molasses.

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

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

22 **PARTIES**

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

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

6 5. Defendant TOTAL SWEETENERS, INC. is a person in the course of doing
7 business within the meaning of Health & Safety Code §25249.11. Defendant TOTAL
8 SWEETENERS, INC. sells Molasses that is sold or consumed in California.

9 6. Defendant AMERIFOODS TRADING COMPANY LLC is a person in the course
10 of doing business within the meaning of Health & Safety Code §25249.11. Defendant
11 AMERIFOODS TRADING COMPANY LLC sells Molasses that is sold or consumed in
12 California. CEH's allegations and claims against Defendant AMERIFOODS TRADING
13 COMPANY LLC in this action are limited to Molasses sold under the First Street brand.

14 7. Defendant BARKMAN HONEY, LLC is a person in the course of doing business
15 within the meaning of Health & Safety Code §25249.11. Defendant BARKMAN HONEY, LLC
16 sells Molasses that is sold or consumed in California.

17 8. Defendant JFC INTERNATIONAL, INC. is a person in the course of doing
18 business within the meaning of Health & Safety Code §25249.11. Defendant JFC
19 INTERNATIONAL, INC. sells Molasses that is sold or consumed in California.

20 9. Defendant NATURAL AMERICAN FOODS, INC. is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Defendant NATURAL
22 AMERICAN FOODS, INC. sells Molasses that is sold or consumed in California.

23 10. Defendant SMART & FINAL STORES LLC is a person in the course of doing
24 business within the meaning of Health & Safety Code §25249.11. Defendant SMART & FINAL
25 STORES LLC sells Molasses that is sold or consumed in California. CEH's allegations and
26 claims against Defendant SMART & FINAL STORES LLC in this action are limited to Molasses
27 sold under the First Street brand.

28

1 11. DOES 1 through 200 are each a person in the course of doing business within the
2 meaning of Health & Safety Code §25249.11. DOES 1 through 200 sell Molasses that is sold or
3 consumed in California.

4 12. The true names of DOES 1 through 200 are either unknown to CEH at this time or
5 the applicable time period before which CEH may file a Proposition 65 action has not run. When
6 their identities are ascertained or the applicable time period before which CEH may file a
7 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

8 13. The defendants identified in paragraphs 5 through 10 and DOES 1 through 200 are
9 collectively referred to herein as “Defendants.”

10 **JURISDICTION AND VENUE**

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

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

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

23 **BACKGROUND FACTS**

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

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

1 harm above certain levels without a “clear and reasonable warning” unless the business
2 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety
3 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 state to
6 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 chemical
8 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant
9 under three subcategories: “developmental reproductive toxicity,” which means harm to the
10 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive
11 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27
12 California Code of Regulations (“C.C.R.”) §27001(c). On February 27, 1988, one year after it
13 was listed as a chemical known to cause reproductive toxicity, lead became subject to the clear
14 and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Id.*;
15 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(b); Health & Safety Code §25249.10(b).

21 21. There is no safe level of exposure to Lead and even minute amounts of Lead have
22 been proven harmful to children and adults. *See, e.g.*, Report of the Advisory Committee on
23 Childhood Lead Poisoning Prevention of the U.S. 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, J., *et al.*, “A Blood Lead Benchmark for

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

6 22. Young children are especially susceptible to the toxic effects of Lead. Children
7 show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from Lead
8 exposure generally occur in children at lower blood Lead levels than in adults. Children absorb
9 and retain more Lead in proportion to their weight than do adults. Young children also show a
10 greater prevalence of iron deficiency, a condition that can increase gastrointestinal absorption of
11 Lead. The body accumulates Lead over a lifetime and releases it slowly, so even small doses
12 received in childhood, over time, can cause adverse health impacts, including but not limited to
13 reproductive toxicity, later in life. For example, in times of physiological stress, such as
14 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 of
17 evidence that even short term lead exposures *in utero* may have long-term harmful effects. See,
18 *e.g.*, Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant
19 Mental Development,” *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *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
22 shown to cause increased risk of premature birth and increased blood pressure in both the mother
23 during pregnancy and the child after birth. See, *e.g.*, Vigeh, M., *et al.*, “Blood Lead at Currently
24 Acceptable Levels May Cause Preterm Labour,” *Occupational & Environmental Medicine*,
25 68:231-234, 2010; Zhang, A., *et al.*, “Association Between Prenatal Lead Exposure and Blood
26 Pressure in Children,” *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, “Low-
27 Level Lead Exposure and Elevations in Blood Pressure During Pregnancy,” *Environmental*
28 *Health Perspectives*, 119:5, 2011.

1 24. Molasses is one of the oldest sweeteners known to humans as it was first
2 developed in India in 500 BC. Molasses is essentially the byproduct of sugar manufacturing.
3 After the sugar cane (or sugar beet) is processed, sugar particles crystalize and are separated from
4 the remaining liquid. This byproduct liquid is then further processed and concentrated until it
5 becomes molasses.

6 25. Molasses contains many vitamins and minerals and is thus often touted and
7 marketed as a healthy superfood. Health claims asserted for molasses include diabetes-friendly
8 sweetener, bone booster, good for the blood and packed with potassium. Molasses is also touted
9 as a pregnancy power food (*see* <https://tinyurl.com/y8wbey8n>) and specifically sold as a health
10 supplement for pregnant women because of its vitamin and nutrient content.

11 26. Defendants' Molasses contain sufficient quantities of Lead such that consumers,
12 including pregnant women and children, who consume Molasses are exposed to a significant
13 amount of Lead. The primary route of exposure for the violations is direct ingestion when people
14 consume Molasses by itself as a supplement, as a sweetener in foods such as coffee, tea or cereal,
15 or as a baking ingredient in other foods. These exposures occur in homes, workplaces and
16 everywhere else throughout California where Molasses is consumed.

17 27. No clear and reasonable warning is provided with Defendants' Molasses
18 regarding the carcinogenic or reproductive hazards of Lead.

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

23 29. More than sixty days prior to naming each Defendant in this lawsuit, CEH
24 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General, to
25 the District Attorneys of every county in California, to the City Attorneys of every California city
26 with a population greater than 750,000 and to each of the named Defendants. In compliance with
27 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
28 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period

1 during which violations occurred; (4) specific descriptions of the violations, including (a) the
2 routes of exposure to Lead from Molasses, and (b) the specific type of products sold and used in
3 violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is
4 the subject of the violations described in each Notice.

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

18 31. None of the public prosecutors with the authority to prosecute violations of
19 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
20 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH's
21 Notices regarding Lead in Molasses.

22 32. Defendants both know and intend that individuals, including pregnant women and
23 children, will consume Molasses, thus exposing them to Lead.

24 33. Nevertheless, Defendants continue to expose consumers, including pregnant
25 women and children, to Lead without prior clear and reasonable warnings regarding the
26 carcinogenic or reproductive hazards of Lead.

27 34. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
28 filing this Complaint.

1 reformulating Molasses such that no Proposition 65 warnings are required or providing prior clear
2 and reasonable warnings, as CEH shall specify in further application to the Court;

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

6 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants
7 to take action to stop ongoing unwarned exposures to Lead resulting from use of Molasses sold
8 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 proper.

12
13 Dated: January 9, 2019

Respectfully submitted,

14 LEXINGTON LAW GROUP

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17 Eric S. Somers
18 Attorneys for Plaintiff
19 CENTER FOR ENVIRONMENTAL HEALTH