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**ENDORSED
FILED
ALAMEDA COUNTY**
NOV 19 2018
CLERK OF THE SUPERIOR COURT
By TANIA PIERCE Deputy

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 CENTER FOR ENVIRONMENTAL HEALTH,
16 a non-profit corporation,

17 Plaintiff,

18 v.

19 ADF FOODS (USA) LTD.; SF MARKETS, LLC;
20 ZB IMPORTING, INC.; and DOES 1 through
21 200, inclusive,

22 Defendants.

Case No. Rg18929153

**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 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, when people consume
9 Indian pastes and sauces containing ginger that are sold by Defendants (the "Products").
10 Consumers, including pregnant women and children, are exposed to Lead when they consume the
11 Products.

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

18 3. Despite the fact that Defendants expose pregnant women, children and other
19 consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
20 reproductive hazards associated with Lead 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 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 have
2 resulted in significant public benefit, including the reformulation of thousands of products to
3 remove toxic chemicals and to make them safer. CEH also provides information to Californians
4 about the health risks associated with exposure to hazardous substances, where manufacturers and
5 other responsible parties fail to do so.

6 5. Defendant ADF FOODS (USA) LTD. is a person in the course of doing business
7 within the meaning of Health & Safety Code §25249.11. Defendant ADF FOODS (USA) LTD.
8 markets, distributes, or sells the Products. CEH's allegations and claims against Defendant ADF
9 FOODS (USA) LTD. in this action are limited to Products that are simmer sauces sold under the
10 Truly Indian brand.

11 6. Defendant SF MARKETS, LLC is a person in the course of doing business within
12 the meaning of Health & Safety Code §25249.11. Defendant SF MARKETS, LLC sells the
13 Products at its retail grocery stores. CEH's allegations and claims against Defendant SF
14 MARKETS, LLC in this action are limited to Products that are simmer sauces sold under the
15 Truly Indian brand.

16 7. Defendant ZB IMPORTING, INC. is a person in the course of doing business
17 within the meaning of Health & Safety Code §25249.11. Defendant ZB IMPORTING, INC.
18 imports, distributes, or sells the Products. CEH's allegations and claims against Defendant ZB
19 IMPORTING, INC. in this action are limited to Products that are simmer sauces sold under the
20 Truly Indian brand.

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

24 9. The true names of DOES 1 through 200 are either unknown to CEH at this time or
25 the applicable time period before which CEH may file a Proposition 65 action has not run. When
26 their identities are ascertained or the applicable time period before which CEH may file a
27 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.
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1 10. The defendants identified in paragraphs 5 through 7 and DOES 1 through 200 are
2 collectively referred to herein as “Defendants.”

3 **JURISDICTION AND VENUE**

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

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

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

16 **BACKGROUND FACTS**

17 14. The People of the State of California have declared by initiative under Proposition
18 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
19 other reproductive harm.” Proposition 65, §1(b).

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

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

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

10 17. On October 1, 1992, the State of California officially listed lead and lead
11 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
12 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
13 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
14 §27001(b); Health & Safety Code §25249.10(b).

15 18. There is no safe level of exposure to Lead and even minute amounts of Lead have
16 been proven harmful to children and adults. *See, e.g.*, Report of the Advisory Committee on
17 Childhood Lead Poisoning Prevention of the U.S. Centers for Disease Control and Prevention,
18 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January
19 4, 2012. A study performed by the California Office of Environmental Health Hazard
20 Assessment determined that exposures to Lead even at levels previously considered safe have
21 now been shown to cause adverse health effects, including reduced cognitive ability and
22 significant diminution of intellectual potential. Carlisle, J., *et al.*, “A Blood Lead Benchmark for
23 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science & Health*,
24 44, 2009. This conclusion is based on a meta-study of 1,333 children who participated in seven
25 international studies. *See* Lanphear, B., *et al.*, “Low-Level Environmental Lead Exposure and
26 Children’s Intellectual Function: An International Pooled Analysis,” *Environmental Health*
27 *Perspectives*, 113:7, 2005.

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

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

24 21. Defendants' Products contain sufficient quantities of Lead such that consumers,
25 including pregnant women and children, who consume Products are exposed to a significant
26 amount of Lead. The primary route of exposure for the violations is direct ingestion when
27 consumers eat Products. These exposures occur in homes, workplaces, and everywhere else
28 throughout California where the products are consumed.

1 22. No clear and reasonable warning is provided with Defendants' Products regarding
2 the carcinogenic or reproductive hazards of Lead.

3 23. Any person acting in the public interest has standing to enforce violations of
4 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
5 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
6 within such time. Health & Safety Code §25249.7(d).

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

17 25. CEH also sent a Certificate of Merit for each Notice to the California Attorney
18 General, to the District Attorneys of every county in California, to the City Attorneys of every
19 California city with a population greater than 750,000, and to each of the named Defendants. In
20 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate
21 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and
22 appropriate experience or expertise who reviewed facts, studies, or other data regarding the
23 exposures to Lead alleged in each Notice; and (2) based on the information obtained through such
24 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement
25 action based on the facts alleged in each Notice. In compliance with Health & Safety Code
26 §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General included
27 factual information – provided on a confidential basis – sufficient to establish the basis for the
28

1 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,
2 studies, or other data reviewed by such persons.

3 26. None of the public prosecutors with the authority to prosecute violations of
4 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
5 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH's
6 Notices regarding Lead in the Products.

7 27. Defendants both know and intend that individuals, including pregnant women and
8 children, will consume the Products, thus exposing them to Lead.

9 28. Nevertheless, Defendants continue to expose consumers, including pregnant
10 women and children, to Lead without prior clear and reasonable warnings regarding the
11 carcinogenic or reproductive hazards of Lead.

12 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
13 filing this Complaint.

14 30. Any person "violating or threatening to violate" Proposition 65 may be enjoined in
15 any court of competent jurisdiction. Health & Safety Code §25249.7. "Threaten to violate" is
16 defined to mean "to create a condition in which there is a substantial probability that a violation
17 will occur." Health & Safety Code §25249.11(e). Proposition 65 provides for civil penalties not
18 to exceed \$2,500 per day for each violation of Proposition 65.

19 **FIRST CAUSE OF ACTION**
20 **(Violations of Health & Safety Code §25249.6)**

21 31. CEH realleges and incorporates by reference as if specifically set forth herein
22 Paragraphs 1 through 30, inclusive.

23 32. By placing the Products into the stream of commerce, each Defendant is a person
24 in the course of doing business within the meaning of Health & Safety Code §25249.11.

25 33. Lead is a chemical listed by the State of California as known to cause cancer, birth
26 defects, and other reproductive harm.

34. Defendants know that average use of their Products will expose users of these Products to Lead. Defendants intend that their Products be used in a manner that results in exposures to Lead from these Products.

35. Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of their Products.

36. By committing the acts alleged above, Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Lead without first giving clear and reasonable warnings to such individuals regarding the carcinogenicity and reproductive toxicity of Lead.

PRAYER FOR RELIEF

CEH prays for judgment against Defendants as follows:

1. 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;

2. 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;

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

1 5. That the Court grant such other and further relief as may be just and proper.
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3 Dated: November 19, 2018

Respectfully submitted,

4 LEXINGTON LAW GROUP

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7 Eric S. Somers
8 Attorneys for Plaintiff
9 CENTER FOR ENVIRONMENTAL HEALTH
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