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7 CENTER FOR ENVIRONMENTAL HEALTH

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN

12
13 CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

14 Plaintiff,

15 v.

16
17 LUCKY VITAMIN, LLC; LUCKY OLD CO
CORPORATION; NUTS.COM, INC.; REGAL
18 HEALTH FOODS INTERNATIONAL, INC.;
SUNFOOD CORPORATION; and DOES 1
19 through 50, inclusive,

20 Defendants.
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FILED

FEB 27 2019

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

Case No.

Civ 1900778

**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 dietary supplements made with moringa that are sold by Defendants (the "Products"). Moringa is
10 the name of the tree from which the leaves are picked, dried and pulverized to make moringa
11 powder that is sold as a dietary supplement. Consumers, including pregnant women, are exposed
12 to Lead when they consume the Products.

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

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

24 **PARTIES**

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

1 brings this enforcement action in the public interest pursuant to Health & Safety Code
2 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
3 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
4 resulted in significant public benefit, including the reformulation of thousands of products to
5 remove toxic chemicals and to make them safer. CEH also provides information to Californians
6 about the health risks associated with exposure to hazardous substances, where manufacturers and
7 other responsible parties fail to do so.

8 5. Defendant LUCKY VITAMIN, LLC is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. Defendant LUCKY VITAMIN, LLC
10 sells the Products to California consumers.

11 6. Defendant LUCKY OLDCO CORPORATION is a person in the course of doing
12 business within the meaning of Health & Safety Code §25249.11. Defendant LUCKY OLDCO
13 CORPORATION sells the Products to California consumers.

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

17 8. Defendant REGAL HEALTH FOODS INTERNATIONAL, INC. is a person in
18 the course of doing business within the meaning of Health & Safety Code §25249.11. Defendant
19 REGAL HEALTH FOODS INTERNATIONAL, INC. manufactures, distributes and sells the
20 Products for sale or use in California.

21 9. Defendant SUNFOOD CORPORATION is a person in the course of doing
22 business within the meaning of Health & Safety Code §25249.11. Defendant SUNFOOD
23 CORPORATION manufactures, distributes and sells the Products for sale or use in California.

24 10. DOES 1 through 50 are each a person in the course of doing business within the
25 meaning of Health & Safety Code §25249.11. DOES 1 through 50 manufacture, distribute, or
26 sell the Products for sale or use in California.

27 11. The true names of DOES 1 through 50 are either unknown to CEH at this time or
28 the applicable time period before which CEH may file a Proposition 65 action has not run. When

1 their identities are ascertained or the applicable time period before which CEH may file a
2 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

3 12. The defendants identified in paragraphs 5 through 9 and DOES 1 through 50 are
4 collectively referred to herein as “Defendants.”

5 **JURISDICTION AND VENUE**

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

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

16 15. Venue is proper in the Marin County Superior Court because one or more of the
17 violations arise in the County of Marin.

18 **BACKGROUND FACTS**

19 16. The People of the State of California have declared by initiative under Proposition
20 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
21 other reproductive harm.” Proposition 65, §1(b).

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

27 No person in the course of doing business shall knowingly and
28 intentionally expose any individual to a chemical known to the state to

1 cause cancer or reproductive toxicity without first giving clear and
2 reasonable warning to such individual

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

12 19. On October 1, 1992, the State of California officially listed lead and lead
13 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
14 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
15 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
16 §27001(b); Health & Safety Code §25249.10(b).

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

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

16 22. Defendants' Products contain sufficient quantities of Lead such that individuals,
17 including pregnant women, who consume the Products are exposed to a significant amount of
18 Lead. The primary route of exposure for the violations is direct ingestion when individuals eat or
19 drink the Products. These exposures occur in homes, workplaces, and everywhere else
20 throughout California where the products are consumed.

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

23 24. Any person acting in the public interest has standing to enforce violations of
24 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
25 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
26 within such time. Health & Safety Code §25249.7(d).

27 25. More than sixty days prior to naming each Defendant in this lawsuit, CEH
28 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General, to

1 the District Attorneys of every county in California, to the City Attorneys of every California city
2 with a population greater than 750,000 and to each of the named Defendants. In compliance with
3 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
4 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
5 during which violations occurred; (4) specific descriptions of the violations, including (a) the
6 routes of exposure to Lead from the Products, and (b) the specific type of Products sold and used
7 in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that
8 is the subject of the violations described in each Notice.

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

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

26 28. Defendants both know and intend that individuals, including pregnant women, will
27 ingest the Products, thus exposing them to Lead.

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

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

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

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

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

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

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

35. 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.

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

37. 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.

1 **PRAYER FOR RELIEF**

2 CEH prays for judgment against Defendants as follows:

3 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
4 permanently enjoin Defendants from offering the Products for sale in California without either
5 reformulating the Products such that no Proposition 65 warnings are required or providing prior
6 clear and reasonable warnings, as CEH shall specify in further application to the Court;

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

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

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

15 5. That the Court grant such other and further relief as may be just and proper.
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17 Dated: February 27, 2019

Respectfully submitted,

18 LEXINGTON LAW GROUP
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21 Eric S. Somers

22 Attorneys for Plaintiff

23 CENTER FOR ENVIRONMENTAL HEALTH
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