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10 *Attorneys for Plaintiff*

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**

14 AS YOU SOW, a 501(c)(3) non-profit
15 corporation,

16 Plaintiff,

17 v.

18 AJINOMOTO FOODS NORTH AMERICA,
19 INC.; AJINOMOTO HEALTH &
20 NUTRITION NORTH AMERICA, INC.;
21 AJINOMOTO CAMBROOKE, INC.,

22 Defendants.

Case No.: **RG 211 075 03**

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 03 2021

CLERK OF THE SUPERIOR COURT

By Molly . Kaatz Deputy

1 **INTRODUCTION**

2 1. California’s Safe Drinking Water and Toxic Enforcement Act (“Toxic
3 Enforcement Act” or “the Act”), Health & Safety Code § 25249.5 et seq., prohibits any person in
4 the course of doing business from knowingly and intentionally exposing any individual to a
5 chemical known to the State of California to cause cancer or reproductive toxicity, without first
6 giving clear and reasonable warning of such exposure. Health & Safety Code § 25249.6. This
7 prohibition applies with equal force against business entities that produce, distribute, or sell
8 consumer products, where the reasonable intended use of such products would result in an
9 exposure to a known carcinogen or reproductive toxin.

10 2. The State of California has officially listed lead as a chemical known to the State
11 to cause cancer, developmental toxicity, and reproductive harm.

12 3. On information and belief, Defendants AJINOMOTO FOODS NORTH
13 AMERICA, INC., AJINOMOTO HEALTH & NUTRITION NORTH AMERICA, INC. and
14 AJINOMOTO CAMBROOKE, INC. manufacture, produce, package, import, supply, market,
15 sell, and/or otherwise distribute in California Cambrooke Burger Patty Mix (“Covered Product”),
16 a product that contains lead and is designed for use by individuals with certain medical
17 conditions.

18 4. Consumers are exposed to lead when they ingest the Covered Product.

19 5. Defendants have failed to provide a clear and reasonable warning that ingestion of
20 the Covered Product will result in exposure to lead, a chemical known to the State of California
21 to cause cancer and developmental and reproductive toxicity. Accordingly, Plaintiff AS YOU
22 SOW seeks an order requiring that Defendants take measures to ensure that California
23 consumers ingesting the Covered Products are not exposed to harmful levels of lead, or provide a
24 clear and reasonable warning as required under the Toxic Enforcement Act that ingestion of the
25 Covered Products will result in exposure to lead.

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3 **PARTIES**

4 6. Plaintiff AS YOU SOW is a 501(c)(3) non-profit corporation dedicated to, among
5 other causes, the protection of the environment, toxics reduction, the promotion and
6 improvement of human health, and the improvement of worker and consumer rights. AS YOU
7 SOW has, since 1992, worked to bring manufacturers and whole industries into compliance with
8 the Toxic Enforcement Act, as part of its work to ensure safer consumer products, promote
9 corporate accountability, and create a sustainable marketplace that does not degrade human
10 health or the planet. AS YOU SOW brings this action as a private attorney general in the public
11 interest pursuant to Health & Safety Code section 25249.7, subdivision (d).

12 7. Defendant AJINOMOTO FOODS NORTH AMERICA, INC. is, on information
13 and belief, a business entity with ten or more employees that has manufactured, produced,
14 packaged, imported, supplied, marketed, sold, and/or otherwise distributed in California,
15 including via the internet, the Covered Product.

16 8. Defendant AJINOMOTO HEALTH & NUTRITION NORTH AMERICA, INC.
17 is, on information and belief, a business entity with ten or more employees that has
18 manufactured, produced, packaged, imported, supplied, marketed, sold, and/or otherwise
19 distributed in California, including via the internet, the Covered Product.

20 9. Defendant AJINOMOTO CAMBROOKE, INC. is, on information and belief, a
21 business entity with ten or more employees that has manufactured, produced, packaged,
22 imported, supplied, marketed, sold, and/or otherwise distributed in California, including via the
23 internet, the Covered Product. According to the company's website: "Ajinomoto Cambrooke
24 recognizes the critical nature of managing serious medical disorders through medically based
25 nutrition therapies."¹

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¹ <https://www.cambrooke.com/about/#.YNtmVuhKg2w> (accessed June 29, 2021).

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1 (b) To be informed about exposures to chemicals that cause cancer, birth
2 defects, or other reproductive harm.

3 (c) To secure strict enforcement of the laws controlling hazardous
4 chemicals and deter actions that threaten public health and safety . . .

5 16. Among other requirements, the Toxic Enforcement Act provides that “[n]o person
6 in the course of doing business shall knowingly and intentionally expose any individual to a
7 chemical known to the State to cause cancer or reproductive toxicity without first giving clear
8 and reasonable warning to such individual, except as provided in Section 25249.10.” (Health &
9 Safety Code § 25249.6.)

10 17. The Toxic Enforcement Act establishes a procedure by which the State develops a
11 list of chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety
12 Code § 25249.8.) No warning is required for a chemical until one year after the State lists the
13 chemical. (Health & Safety Code § 25249.10(b).)

14 18. The Office of Environmental Health Hazard Assessment (OEHHA), which is part
15 of the California Environmental Protection Agency (CalEPA), is the lead agency charged with
16 implementing the Toxic Enforcement Act. (Health & Safety Code § 25249.12.) OEHHA has
17 promulgated regulations implementing the Toxic Enforcement Act. (*See* 27 CCR § 25102 *et*
18 *seq.*)

19 19. On February 27, 1987, OEHHA listed lead as a chemical known to the State to
20 cause developmental toxicity, male reproductive toxicity, and female reproductive toxicity. (27
21 CCR § 27001(b).)

22 20. For many of the chemicals listed under the Act, OEHHA has established “safe
23 harbor levels,” which include No Significant Risk Levels (NSRLs) for cancer-causing chemicals
24 and Maximum Allowable Dose Levels (MADLs) for chemicals causing reproductive toxicity.
25 The established MADL for lead is 0.5 µg/day. (27 CCR § 25805.)

26 21. According to applicable regulations, a warning for consumer product exposure is
27 “clear and reasonable” if it is “prominently displayed on a label, labeling, or sign, ... with such
28 conspicuousness as compared with other words, statements, designs or devices on the label,

1 labeling, or sign, as to render the warning likely to be read and understood by an ordinary
2 individual under customary conditions of purchase or use.” (27 CCR § 25601(c).”)

3 22. According to applicable regulations, for internet purchases, a warning “must be
4 provided by including either the warning or a clearly marked hyperlink using the word
5 ‘**WARNING**’ on the product display page, or by otherwise prominently displaying the warning
6 to the purchaser prior to completing the purchase.” (27 CCR § 25602(b) (bold in original).)

7 23. According to applicable regulations, a warning for consumer product exposure
8 must include the following elements:

9 (1) A symbol consisting of a black exclamation point in a yellow
10 equilateral triangle with a bold black outline. Where the sign, label or labeling for
11 the product is not printed using the color yellow, the symbol may be printed in
12 black and white. The symbol shall be placed to the left of the text of the warning,
13 in a size no smaller than the height of the word “WARNING”.

14 (2) The word “WARNING” in all capital letters and bold print, and:

15 ... (B) For exposures to listed reproductive toxicants, the words, “This
16 product can expose you to [name of one or more chemicals], a chemical [or
17 chemicals] known to the State of California to cause birth defects or other
18 reproductive harm. For more information go to
19 www.P65Warnings.ca.gov/product.”²

20 24. A consumer product exposure is “an exposure that results from a person’s
21 acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer
22 product, including consumption of a food.” (27 CCR § 25600.1(d).)

23 25. An exposure is knowing if the person or entity responsible for the exposure had or
24 has “knowledge of the fact that . . . exposure to a chemical listed pursuant to Section 24249.8(a)
25 of the Act is occurring.” (27 CCR § 25102(n).)

26 26. This Court has authority to enjoin “[a]ny person that violates or threatens to
27 violate [Health & Safety Code § 25249.6],” and to impose civil penalties “not to exceed two
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² 27 CCR 25603(a).

1 thousand five hundred dollars (\$2,500) per day for each violation in addition to any other penalty
2 established by law.” (Health & Safety Code § 25249.7.) “Threaten to violate” is defined to mean
3 “to create a condition in which there is a substantial probability that the violation will occur.
4 (Health and Safety Code § 25249.11((e).)

5 27. Private parties are entitled to bring an action to enforce the Act under Health &
6 Safety Code § 25249.7(d).

8 **FACTUAL BACKGROUND**

9 28. The Covered Product, Cambrooke Burger Patty Mix, is manufactured, distributed,
10 and/or sold by Defendant, designed for use by individuals with certain medical conditions, and
11 contains lead.

12 29. Testing obtained by Plaintiff from an independent laboratory demonstrates that
13 the Covered Product contains lead.

14 30. Since at least July 15, 2019, Defendants have marketed, manufactured, produced,
15 packaged, imported, sold, and/or otherwise distributed the Covered Products in the State of
16 California.

17 31. On information and belief, Defendants have had knowledge that the Covered
18 Products contain lead since at least July 15, 2019.

19 32. The primary route of exposure to lead from Defendants’ products is ingestion.
20 This exposure to hazardous lead results from the intended and reasonably foreseeable use of the
21 Covered Product.

22 33. On July 15, 2020, Plaintiff served Defendants with a written notice of violation
23 stating that Defendants had violated the Toxic Enforcement Act by exposing individuals to lead
24 in Cambrooke Burger Patty Mix without providing a clear and reasonable warning. True and
25 correct copies of Plaintiff’s sixty-day notice are attached as Exhibit 1 to this Complaint.

26 34. On July 15, 2020, Plaintiff provided notice of the violation to the Attorney
27 General and the district attorneys and city attorneys in whose jurisdiction the violations are
28 alleged to have occurred.

1 35. Defendants have knowingly and intentionally exposed consumers in California to
2 lead. The exposure has been knowing and intentional, because they result from Defendants'
3 marketing, manufacturing, producing, packaging, importing, sale, and/or distribution of the
4 Covered Products, which contain lead, with knowledge that reasonably foreseeable use of the
5 Covered Products will result in consumers' exposure to lead by way of ingestion.

6 36. In accordance with Health and Safety Code section 25249.7(d), this action is
7 being commenced more than 60 days from the date that *As You Sow* provided notice of the
8 violation of Health and Safety Code section 25249.6 alleged herein to the Attorney General and
9 the district attorneys and city attorneys in whose jurisdiction the violations are alleged to have
10 occurred, and to Defendants. The notices provided to Defendants included certificates of merit
11 that comply with the requirements of Health and Safety Code section 25249.7(d)(1). Factual
12 information sufficient to establish the basis of the certificate of merit was attached to the
13 certificate of merit served on the Attorney General.

14 37. Neither the Attorney General, nor any district attorney, city attorney, nor any
15 other public prosecutor has commenced and is diligently prosecuting an action based on the
16 violations alleged herein.

17
18 **FIRST CAUSE OF ACTION**
19 **(Violation of Health & Safety Code § 25249.6)**

20 38. Plaintiff re-alleges and incorporates by reference all the allegations set forth in
21 this Complaint.

22 39. By committing the acts alleged above, Defendants have, in the course of doing
23 business, knowingly and intentionally exposed individuals to chemicals known to the State of
24 California to cause developmental and reproductive toxicity without first giving clear and
25 reasonable warning to such individuals, within the meaning of Health and Safety Code section
26 25249.6.

40. These actions violate Health and Safety Code section 25249.6 and render Defendants liable for civil penalties up to \$2,500 per day for each violation, as well as other remedies.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

A. Grant civil penalties to be paid by Defendants for the violations of Health & Safety Code § 25249.6;

B. Pursuant to Health and Safety Code §25249.7, enter such injunctions or other orders as are necessary to prevent Defendants from exposing persons within the State of California to known developmental and reproductive toxins resulting from the reasonably foreseeable use of the Covered Product without providing a clear and reasonable warning;

C. Award Plaintiff reasonable attorneys' fees and costs; and,

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 3, 2021

By:

Chelsea J. Linsley
Chelsea J. Linsley

Attorneys for Plaintiff As You Sow

EXHIBIT 1



July 15, 2020

Howard Lossing, CEO
Ajinomoto Cambrooke, Inc.
4 Copeland Dr
Ayer, Massachusetts, 01432-1751

Sumio Maeda, President
Ajinomoto Foods North America, Inc.
4200 E Concourses Street, Ste.100
Ontario, CA 91764-4982

Tatsuya Sato, President
Ajinomoto Health & Nutrition North
America, Inc.
1300 N. Arlington Hts., Ste. 110
Itasca, IL 60143

Ajinomoto Cambrooke, Inc.
Ajinomoto Foods North America, Inc.
Ajinomoto Health & Nutrition North America,
Inc.
c/o Corporation Service Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: NOTICE OF VIOLATION OF CALIFORNIA HEALTH AND SAFETY CODE
SECTION 25249.5 ET SEQ.

To Whom It May Concern:

As You Sow (“AYS”) is a 501(c)(3) non-profit corporation dedicated to, among other causes, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education and the protection of the environment, and corporate accountability. AYS is based in Berkeley, California, and was incorporated in 1992 under the laws of the State of California.

AYS has documented violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), Cal. Health & Safety Code §25249.5 et seq., by Ajinomoto Foods North America, Inc., Ajinomoto Health & Nutrition North America, Inc., and Ajinomoto Cambrooke, Inc. (collectively, the “Company”). This letter constitutes notice by AYS to the Company of these violations. Specifically, the Company has violated and is violating Section 25249.6, which provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Pursuant to section 25249.7(d) of the statute, AYS intends to bring an enforcement action sixty days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the notices served upon the violator(s). The specific details of the violations that are the subject of this notice are provided below.

Alleged violators. The names of the violators covered by this notice are:

- Ajinomoto Cambrooke, Inc.
- Ajinomoto Foods North America, Inc.
- Ajinomoto Health & Nutrition North America, Inc.

Chemical(s). These violations involve exposures to lead from the products listed below. The State of California has officially listed lead as a chemical known to cause cancer and reproductive harm.

Consumer products. The product that is the subject of this notice is **Cambrooke Burger Patty Mix** which contains lead and is, at any time, manufactured, distributed, or sold by the alleged violator.

Route of exposure. Use of the products identified in this notice result in human exposures to lead. The route of exposure is ingestion. No clear and reasonable warning is provided with the products regarding the hazards of lead.

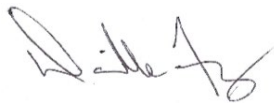
Duration of violation. These ongoing violations have occurred on every day since at least July 15, 2019, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

Pursuant to Title 11, Cal. Code Regs. section 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify this ongoing violation of California law, *As You Sow* is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. You may communicate directly with *As You Sow* to discuss an early resolution of this matter by contacting:

Danielle Fugere
President
As You Sow
2150 Kittredge St. Suite 450
Berkeley, CA 94704
Tel: (510) 735-8141
Email: dfugere@asyousow.org

Sincerely,



Danielle Fugere

CERTIFICATE OF MERIT

(for *As You Sow*'s Notice of Proposition 65 Violation on Ajinomoto Foods North America, Inc., Ajinomoto Health & Nutrition North America, Inc., and Ajinomoto Cambrooke, Inc.)

I, Chelsea Linsley, declare:

This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties in the notice have violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.

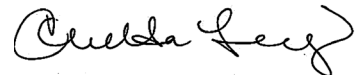
I am in-house counsel and Staff Attorney of the noticing party.

I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to the listed chemical that is the subject of the action.

Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

The copy of this Certificate of Merit served on the Attorney General has attached to it to it factual information sufficient to establish the basis for this certificate, including the information identified in section 25249.7(h)(2) of the Health and Safety Code, i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 15, 2020



Chelsea Linsley

Enclosure (For Attorney General Copy only)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years. My business address is: 2150 Kittredge Street, Ste. 450, Berkeley, CA 94704.

On July 15, 2020, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit
- “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Howard Lossing, CEO
Ajinomoto Cambrooke, Inc.
4 Copeland Dr
Ayer, Massachusetts, 01432-1751

Sumio Maeda, President
Ajinomoto Foods North America, Inc.
4200 E Concourse Street, Ste.100
Ontario, CA 91764-4982

Tatsuya Sato, President
Ajinomoto Health & Nutrition North America,
Inc.
1300 N. Arlington Hts., Ste. 110
Itasca, IL 60143

Ajinomoto Cambrooke, Inc.
Ajinomoto Foods North America, Inc.
Ajinomoto Health & Nutrition North America, Inc.
c/o Corporation Service Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

On July 15, 2020, I served the following documents:

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit

on each of the District Attorneys on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto and depositing it at a United States Postal Service mail box for delivery by First Class Mail.

On July 15, 2020, I served the following documents on the Attorney General using the Attorney General’s Proposition 65 electronic Notice Filing Form (<https://oag.ca.gov/prop65/add-60-day-notice>):

- Notice of Violation of California Health & Safety Code section 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

Executed on July 15, 2020, at Berkeley, California.



Kwan Hong Teoh