

ENDORSED  
FILED  
San Francisco County Superior Court

OCT 21 2020

CLERK OF THE COURT  
BY: NEYL WEBB  
Deputy Clerk

LEXINGTON LAW GROUP  
Ryan Berghoff, State Bar No. 308812  
Meredyth Merrow, State Bar No. 328337  
503 Divisadero Street  
San Francisco, CA 94117  
Telephone: (415) 913-7800  
Facsimile: (415) 759-4112  
rberghoff@lexlawgroup.com  
mmerrow@lexlawgroup.com

Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

CGC-20-587235

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,

Plaintiff,

v.

SOBISK FOODS, LLC; DOLLAR TREE  
STORES, INC.; and DOES 1 through 200,  
inclusive,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

Health & Safety Code § 25249.6, *et seq.*

(Other)

BY FAX

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 Sobisk Breakfast Sandwiches sold by Defendants (the "Products"). Consumers, including  
10 pregnant women and children, are exposed to Lead when they consume Products.

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 Products containing significant quantities of Lead into the California marketplace, thereby  
16 exposing consumers of their Products, 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 Products 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 SOBISK FOODS, LLC is a person in the course of doing business  
7 within the meaning of Health & Safety Code § 25249.11. Defendant SOBISK FOODS, LLC  
8 sells Products that are sold or consumed in California.

9 6. Defendant DOLLAR TREE STORES, INC. is a person in the course of doing  
10 business within the meaning of Health & Safety Code § 25249.11. Defendant DOLLAR TREE  
11 STORES, INC. sells Products that are sold or consumed in California.

12 7. DOES 1 through 200 are each a person in the course of doing business within the  
13 meaning of Health & Safety Code § 25249.11. DOES 1 through 200 sell Products that are sold or  
14 consumed in California.

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

19 9. The defendants identified in paragraphs 5 through 6 and DOES 1 through 200 are  
20 collectively referred to herein as “Defendants.”

### 21 **JURISDICTION AND VENUE**

22 10. The Court has jurisdiction over this action pursuant to Health & Safety Code  
23 § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to  
24 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
25 other trial courts.

26 11. This Court has jurisdiction over Defendants because each is a business entity that  
27 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally  
28 avails itself of the California market through the sale, marketing, or consumption of Products in

1 California or by having such other contacts with California so as to render the exercise of  
2 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
3 substantial justice.

4 12. Venue is proper in San Francisco County Superior Court because one or more of  
5 the violations arise in the County of San Francisco.

### 6 **BACKGROUND FACTS**

7 13. The People of the State of California have declared by initiative under Proposition  
8 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
9 other reproductive harm.” Proposition 65, § 1(b).

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

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

18 15. On February 27, 1987, the State of California officially listed lead as a chemical  
19 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant  
20 under three subcategories: “developmental reproductive toxicity,” which means harm to the  
21 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive  
22 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27  
23 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27, 1988, one year after it  
24 was listed as a chemical known to cause reproductive toxicity, lead became subject to the clear  
25 and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Id.*;  
26 Health & Safety Code § 25249.10(b).

27 16. On October 1, 1992, the State of California officially listed lead and lead  
28 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were

1 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
2 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
3 § 27001(b); Health & Safety Code § 25249.10(b).

4 17. There is no safe level of exposure to Lead and even minute amounts of Lead have  
5 been proven harmful to children and adults. *See, e.g.,* Report of the Advisory Committee on  
6 Childhood Lead Poisoning Prevention of the U.S. Centers for Disease Control and Prevention,  
7 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January  
8 4, 2012. A study performed by the California Office of Environmental Health Hazard  
9 Assessment determined that exposures to Lead even at levels previously considered safe have  
10 now been shown to cause adverse health effects, including reduced cognitive ability and  
11 significant diminution of intellectual potential. Carlisle, J., *et al.*, “A Blood Lead Benchmark for  
12 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science & Health*,  
13 44, 2009. This conclusion is based on a meta-study of 1,333 children who participated in seven  
14 international studies. *See* Lanphear, B., *et al.*, “Low-Level Environmental Lead Exposure and  
15 Children’s Intellectual Function: An International Pooled Analysis,” *Environmental Health*  
16 *Perspectives*, 113:7, 2005.

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

27 19. Lead exposures for pregnant women are also of particular concern in light of  
28 evidence that even short-term Lead exposures *in utero* may have long-term harmful effects. *See,*

1 e.g., Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant  
2 Mental Development,” *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *et al.*,  
3 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*  
4 *Health Perspectives*, 114:5, 2006. Increased Lead exposure during pregnancy has also been  
5 shown to cause increased risk of premature birth and increased blood pressure in both the mother  
6 during pregnancy and the child after birth. See, e.g., Vigeh, M., *et al.*, “Blood Lead at Currently  
7 Acceptable Levels May Cause Preterm Labour,” *Occupational & Environmental Medicine*,  
8 68:231-234, 2010; Zhang, A., *et al.*, “Association Between Prenatal Lead Exposure and Blood  
9 Pressure in Children,” *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, “Low-  
10 Level Lead Exposure and Elevations in Blood Pressure During Pregnancy,” *Environmental*  
11 *Health Perspectives*, 119:5, 2011.

12 20. Defendants’ Products contain sufficient quantities of Lead such that consumers,  
13 including pregnant women and children, who consume Products are exposed to a significant  
14 amount of Lead. The primary route of exposure for the violations is direct ingestion when  
15 consumers eat Products. These exposures occur in homes, workplaces and everywhere else  
16 throughout California where Products are consumed.

17 21. No clear and reasonable warning is provided by Defendants’ regarding the  
18 carcinogenic or reproductive hazards of Lead in their Products.

19 22. 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 23. 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  
28 following information: (1) the name and address of each violator; (2) the statute violated; (3) the

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

5 24. 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 25. 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 Products.

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

24 27. 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 28. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
28 filing this Complaint.

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

6  
7                                   **FIRST CAUSE OF ACTION**  
8                                   **(Violations of Health & Safety Code § 25249.6)**

9           30. CEH realleges and incorporates by reference as if specifically set forth herein  
10 Paragraphs 1 through 29, inclusive.

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

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

15           33. Defendants know that average use of their Products will expose users of Products  
16 to Lead. Defendants intend that their Products be used in a manner that results in exposures to  
17 Lead from Products.

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

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

25                                   **PRAYER FOR RELIEF**

26           CEH prays for judgment against Defendants as follows:

27           1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
28 permanently enjoin Defendants from offering Products for sale in California without either



1 reformulating Products 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 Products sold by  
8 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: October 20, 2020

Respectfully submitted,

14 LEXINGTON LAW GROUP

15  
16 

---

17 Ryan Berghoff  
18 Meredyth Merrow  
19 Attorneys for Plaintiff  
20 CENTER FOR ENVIRONMENTAL HEALTH  
21  
22  
23  
24  
25  
26  
27  
28