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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ALAMEDA**

9
10 AS YOU SOW, a 501(c)(3) non-profit
corporation,

11 Plaintiff,

12 v.

13 HORMEL HEALTH LABS, LLC and
14 HORMEL FOODS CORPORATION,

15 Defendants.
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ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

12/20/2021 at 05:00:56 PM

By: Xian-xii Bowie, Deputy Clerk

Case No.: 21CV004421

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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. Lead is listed as a chemical known to the State to cause cancer and reproductive
11 toxicity. (27 Cal. Code Regs. § 27001(b).)

12 3. On information and belief, Defendants Hormel Health Labs, LLC and Hormel
13 Foods Corporation (collectively “Hormel” or “Defendants”) manufacture, produce, package,
14 import, supply, market, sell, and/or otherwise distribute in California, including via the internet,
15 medical food products which contain lead, including but not limited to the following products:
16 Vital Cuisine™ Vegetarian Stew (collectively, the “Covered Products”).

17 4. Lead is present in the Covered Products. Consumers are exposed to lead when
18 they ingest the Covered Products.

19 5. Since at least December 18, 2019, Defendant has failed to provide clear and
20 reasonable warning that ingestion of the Covered Products will result in exposure to lead, a
21 chemical known to the State of California to cause developmental and reproductive toxicity.
22 Accordingly, Plaintiff *As You Sow* seeks an order requiring that Defendants take measures to
23 ensure that California consumers ingesting the Covered Products are not exposed to harmful
24 levels of lead, or provide a clear and reasonable warning as required under the Toxic
25 Enforcement Act that ingestion of the Covered Products will result in exposure to lead.

26 **PARTIES**

27 6. Plaintiff AS YOU SOW is a 501(c)(3) non-profit corporation dedicated to, among
28 other causes, the protection of the environment, toxics reduction, the promotion and

improvement of human health, and the improvement of worker and consumer rights. AS YOU SOW has, since 1992, worked to bring manufacturers and whole industries into compliance with the Toxic Enforcement Act as part of its work to ensure safer consumer products, promote corporate accountability, and create a sustainable marketplace that does not degrade human health or the planet. AS YOU SOW brings this action as a private attorney general in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d).

7. Defendant HORMEL HEALTH LABS, LLC is, on information and belief, a business entity with ten or more employees that has manufactured, produced, packaged, imported, supplied, marketed, sold, and/or otherwise distributed in California, including via the internet, medical food products containing lead, including but not limited to, Vital Cuisine™ Vegetarian Stew (collectively, the “Products”).

8. Defendant HORMEL FOODS CORPORATION is, on information and belief, a business entity with ten or more employees that has manufactured, produced, packaged, imported, supplied, marketed, sold, and/or otherwise distributed in California, including via the internet, medical food products containing lead, including but not limited to, Vital Cuisine™ Vegetarian Stew (collectively, the “Products”).

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Health and Safety Code, section 25249.7, which allows enforcement of the Toxic Enforcement Act in any court of competent jurisdiction, and pursuant to California Constitution, article VI, section 10, because this case does not present a cause given by statute to other trial courts.

10. This Court has jurisdiction over Defendant because it is a business entity that conducts sufficient business, has sufficient minimum contacts in, or otherwise intentionally avails itself of the market in California.

11. Venue is proper in the Superior Court of California, Alameda County, pursuant to Code of Civil Procedure sections 393 and 395, because this court is a court of competent jurisdiction, because plaintiff seeks civil penalties against defendant, because one or more instances of wrongful conduct occurred and continue to occur in Alameda County, and/or

1 because defendant conducted or continues to conduct business in this county with respect to the
2 consumer products at issue in this case.

3 12. Plaintiff has met the statutory requirements for notice to bring this citizen suit
4 enforcement action under Health and Safety Code section 25249.7 and its implementing
5 regulations.

6 **LEGAL BACKGROUND**

7 13. In 1986, the voters of California overwhelmingly enacted the Safe Drinking
8 Water and Toxic Enforcement Act.

9 14. The Preamble to the Toxic Enforcement Act ballot measure provides a clear
10 statement of the purpose of the Act:

11 The people of California find that hazardous chemicals pose a serious potential
12 threat to their health and well-being, that state government agencies have failed to
13 provide them with adequate protection, and that these failures have been serious
14 enough to lead to investigations by federal agencies of the administration of
California's toxic protection programs. The people therefore declare their rights:

15 (a) To protect themselves and the water they drink against chemicals that
16 cause cancer, birth defects, or other reproductive harm.

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

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

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

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

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

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

9 19. For many of the chemicals listed under the Act, OEHHA has established “safe
10 harbor levels,” which include No Significant Risk Levels (NSRLs) for cancer-causing chemicals
11 and Maximum Allowable Dose Levels (MADLs) for chemicals causing reproductive toxicity. .

12 20. The established MADL for lead is 0.5 µg/day. (27 CCR § 25805.)

13 21. According to applicable regulations, a warning for consumer product exposure is
14 “clear and reasonable” if it is “prominently displayed on a label, labeling, or sign, ... with such
15 conspicuousness as compared with other words, statements, designs or devices on the label,
16 labeling, or sign, as to render the warning likely to be read and understood by an ordinary
17 individual under customary conditions of purchase or use.” (27 CCR § 25601(c).

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

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

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

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

2 ... (B) For exposures to listed reproductive toxicants, the words, “This product
3 can expose you to [name of one or more chemicals], a chemical [or chemicals]
4 known to the State of California to cause birth defects or other reproductive harm.
5 For more information go to www.P65Warnings.ca.gov/product.”¹

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

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

12 26. This Court has authority to enjoin “[a]ny person that violates or threatens to
13 violate [Health & Safety Code § 25249.6],” and to impose civil penalties “not to exceed two
14 thousand five hundred dollars (\$2,500) per day for each violation in addition to any other penalty
15 established by law.” (Health & Safety Code § 25249.7.) “Threaten to violate” is defined to mean
16 “to create a condition in which there is a substantial probability that the violation will occur.
17 (Health and Safety Code § 25249.11((e).)

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

20 **FACTUAL BACKGROUND**

21 28. The Covered Products are food products, which are marketed as formulated “to
22 try and meet the unique needs of cancer patients undergoing treatment.”²

23 29. Testing obtained by Plaintiff from an independent laboratory demonstrates that
24 the Covered Products contain lead in excessive of the established MADL.

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28 ¹ 27 CCR 25603(a).

² <https://www.hormelhealthlabs.com/product/hormel-vital-cuisine-meals/>

1 30. Since at least December 18, 2019, Defendant has marketed, manufactured,
2 produced, packaged, imported, sold, and/or otherwise distributed the Covered Products in the
3 State of California.

4 31. On information and belief, Defendant has had knowledge that the Covered
5 Products contain lead since at least December 18, 2019.

6 32. The primary route of exposure to lead from Defendant's products is ingestion.
7 This exposure to hazardous lead results from the intended and reasonably foreseeable use of the
8 Covered Products.

9 33. On December 18, 2020, Plaintiff served Defendant with a written notice of
10 violation stating that Defendant had violated the Toxic Enforcement Act by exposing individuals
11 to lead in the Covered Products without providing a clear and reasonable warning. A true and
12 correct copy of Plaintiff's sixty-day notice of violation is attached as Exhibit 1 to this Complaint.

13 34. On December 18, 2020, Plaintiff provided notice of the violation to the Attorney
14 General and the district attorneys and city attorneys in whose jurisdiction the violations are
15 alleged to have occurred.

16 35. Defendant has knowingly and intentionally exposed consumers in California to
17 lead. The exposure has been knowing and intentional, because they result from Defendant's
18 marketing, manufacturing, producing, packaging, importing, sale, and/or distribution of the
19 Covered Products, which contain lead, with knowledge that reasonably foreseeable use of the
20 Covered Products will result in consumers' exposure to lead by way of ingestion.

21 36. In accordance with Health and Safety Code section 25249.7(d), this action is
22 being commenced more than 60 days from the date that *As You Sow* provided notice of the
23 violation of Health and Safety Code section 25249.6 alleged herein to the Attorney General and
24 the district attorneys and city attorneys in whose jurisdiction the violations are alleged to have
25 occurred, and to Defendant. The notices provided to Defendant included certificates of merit that
26 complied with the requirements of Health and Safety Code section 25249.7(d)(1). Factual
27 information sufficient to establish the basis of the certificate of merit was attached to the
28 certificate of merit served on the Attorney General.

1 37. Neither the Attorney General, nor any district attorney, city attorney, or any other
2 public prosecutor has commenced and is diligently prosecuting an action against the violations
3 alleged herein.

4 **FIRST CAUSE OF ACTION**
5 **(Violation of Health & Safety Code § 25249.6)**

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

8 39. By committing the acts alleged above, Defendant has, in the course of doing
9 business, knowingly and intentionally exposed individuals to chemicals known to the State of
10 California to cause developmental and reproductive toxicity without first giving clear and
11 reasonable warning to such individuals, within the meaning of Health and Safety Code section
12 25249.6.

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays that the Court:

18 A. Grant civil penalties to be paid by Defendant for each violation of Health &
19 Safety Code § 25249.6;

20 B. Pursuant to Health and Safety Code §25249.7, enter such injunctions or other
21 orders as are necessary to prevent Defendant from exposing persons within the State of
22 California to known developmental and reproductive toxins resulting from the reasonably
23 foreseeable use of the Covered Products without providing a clear and reasonable warning
24 calculated to ensure that the warning message is available to individuals prior to exposure;

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

26 D. Grant such other and further relief as the Court deems just and proper.
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Respectfully submitted,

Dated: December 20, 2021

AS YOU SOW

By: 
Danielle Fugere

Attorneys for Plaintiff