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CENTER FOR ENVIRONMENTAL HEALTH

**FILED BY FAX**  
ALAMEDA COUNTY  
January 05, 2021  
CLERK OF  
THE SUPERIOR COURT  
By Cheryl Clark, Deputy  
CASE NUMBER:  
**RG19001951**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,

Plaintiff,

v.

TOTAL SWEETENERS, INC., et al.

Defendants.

Case No. RG 19-001951

**FIRST AMENDED 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 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 First Amended Complaint (this “Complaint”) seeks to remedy Defendants’  
6 failure to warn individuals in California that they are being exposed to lead and lead compounds  
7 (collectively, “Lead”), chemicals known to the State of California to cause cancer and birth  
8 defects and other reproductive harm. Such exposures have occurred, and continue to occur, when  
9 people consume molasses that is sold by Defendants, their customers or other downstream entities  
10 as a finished product. Consumers, including pregnant women and children, are exposed to Lead  
11 when they consume Defendants’ molasses. This Complaint covers exposures to Lead from  
12 molasses sold by Defendants, their customers or other downstream entities as a finished product.

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 first providing clear and reasonable warnings to exposed individuals. Defendants, either directly  
17 or through their downstream customers, introduce molasses containing significant quantities of  
18 Lead into the California marketplace, thereby exposing consumers of their molasses, many of  
19 whom are pregnant women and children, to Lead.

20 3. Despite the fact that Defendants expose pregnant women, children and other  
21 consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or  
22 reproductive hazards associated with Lead exposure resulting from consumption of molasses sold  
23 by Defendants or their downstream customers as a finished product. Defendants’ conduct thus  
24 violates the warning provision of Proposition 65. Health & Safety Code §25249.6.

#### 25 **PARTIES**

26 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a non-profit  
27 corporation dedicated to protecting the public from environmental health hazards and toxic  
28 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of

1 California. CEH is a “person” within the meaning of Health & Safety Code §25249.11(a) and  
2 brings this enforcement action in the public interest pursuant to Health & Safety Code  
3 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has  
4 prosecuted a large number of Proposition 65 cases in the public interest. These cases resulted in  
5 significant public benefit, including the reformulation of thousands of products to remove toxic  
6 chemicals and to make them safer. CEH also provides information to Californians about the  
7 health risks associated with exposure to hazardous substances, where manufacturers and other  
8 responsible parties fail to do so.

9 5. Defendant TOTAL SWEETENERS, INC. is a person in the course of doing  
10 business within the meaning of Health & Safety Code §25249.11. Defendant TOTAL  
11 SWEETENERS, INC. sells molasses that is sold as a finished product in California.

12 6. Defendant BEAVERTON FOODS, INC. is a person in the course of doing  
13 business within the meaning of Health & Safety Code §25249.11. Defendant BEAVERTON  
14 FOODS, INC. sells molasses that is sold as a finished product in California.

15 7. Defendant B&G FOODS NORTH AMERICA, INC. is a person in the course of  
16 doing business within the meaning of Health & Safety Code §25249.11. Defendant B&G  
17 FOODS NORTH AMERICA, INC. sells molasses that is sold as a finished product in California.

18 8. Defendant DOMINO FOODS, INC. is a person in the course of doing business  
19 within the meaning of Health & Safety Code §25249.11. Defendant DOMINO FOODS, INC.  
20 sells molasses that is sold as a finished product in California.

21 9. Defendant IMPERIAL SUGAR COMPANY is a person in the course of doing  
22 business within the meaning of Health & Safety Code §25249.11. Defendant IMPERIAL  
23 SUGAR COMPANY sells molasses that is sold as a finished product in California.

24 10. Defendant JFC INTERNATIONAL, INC. is a person in the course of doing  
25 business within the meaning of Health & Safety Code §25249.11. Defendant JFC  
26 INTERNATIONAL, INC. sells molasses that is sold as a finished product in California.

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1 11. Defendant WAL-MART.COM USA, LLC is a person in the course of doing  
2 business within the meaning of Health & Safety Code §25249.11. Defendant WAL-MART.COM  
3 USA, LLC sells molasses that is sold as a finished product in California.

4 12. DOES 1 through 200 are each a person in the course of doing business within the  
5 meaning of Health & Safety Code §25249.11. DOES 1 through 200 sells molasses that is sold as  
6 a finished product in California.

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

11 14. The defendants identified in paragraphs 5 through 11 and DOES 1 through 200 are  
12 collectively referred to herein as "Defendants."

13 **JURISDICTION AND VENUE**

14 15. The Court has jurisdiction over this action pursuant to Health & Safety Code  
15 §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to  
16 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
17 other trial courts.

18 16. This Court has jurisdiction over Defendants because each is a business entity that  
19 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally  
20 avails itself of the California market through the sale, marketing, or consumption of molasses in  
21 California or by having such other contacts with California so as to render the exercise of  
22 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
23 substantial justice.

24 17. Venue is proper in Alameda County Superior Court because one or more of the  
25 violations arise in the County of Alameda.  
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1 **BACKGROUND FACTS**

2 18. The People of the State of California have declared by initiative under Proposition  
3 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
4 other reproductive harm.” Proposition 65, §1(b).

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

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

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

22 21. On October 1, 1992, the State of California officially listed lead and lead  
23 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
24 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
25 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
26 §27001(b); Health & Safety Code §25249.10(b).

27 22. There is no safe level of exposure to Lead and even minute amounts of Lead have  
28 been proven harmful to children and adults. *See, e.g.*, Report of the Advisory Committee on

1 Childhood Lead Poisoning Prevention of the U.S. Centers for Disease Control and Prevention,  
2 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January  
3 4, 2012. A study performed by the California Office of Environmental Health Hazard  
4 Assessment determined that exposures to Lead even at levels previously considered safe have  
5 now been shown to cause adverse health effects, including reduced cognitive ability and  
6 significant diminution of intellectual potential. Carlisle, J., *et al.*, “A Blood Lead Benchmark for  
7 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science & Health*,  
8 44, 2009. This conclusion is based on a meta-study of 1,333 children who participated in seven  
9 international studies. *See* Lanphear, B., *et al.*, “Low-Level Environmental Lead Exposure and  
10 Children’s Intellectual Function: An International Pooled Analysis,” *Environmental Health*  
11 *Perspectives*, 113:7, 2005.

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

22 24. Lead exposures for pregnant women are also of particular concern in light of  
23 evidence that even short term lead exposures *in utero* may have long-term harmful effects. *See*,  
24 *e.g.*, Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant  
25 Mental Development,” *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *et al.*,  
26 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*  
27 *Health Perspectives*, 114:5, 2006. Increased lead exposure during pregnancy has also been  
28 shown to cause increased risk of premature birth and increased blood pressure in both the mother

1 during pregnancy and the child after birth. *See, e.g.,* Vigeh, M., *et al.*, “Blood Lead at Currently  
2 Acceptable Levels May Cause Preterm Labour,” *Occupational & Environmental Medicine*,  
3 68:231-234, 2010; Zhang, A., *et al.*, “Association Between Prenatal Lead Exposure and Blood  
4 Pressure in Children,” *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, “Low-  
5 Level Lead Exposure and Elevations in Blood Pressure During Pregnancy,” *Environmental*  
6 *Health Perspectives*, 119:5, 2011.

7 25. Molasses is one of the oldest sweeteners known to humans as it was first  
8 developed in India in 500 BC. Molasses is essentially the byproduct of sugar manufacturing.  
9 After the sugar cane (or sugar beet) is processed, sugar particles crystalize and are separated from  
10 the remaining liquid. This byproduct liquid is then further processed and concentrated until it  
11 becomes molasses.

12 26. Molasses contains many vitamins and minerals and is thus often touted and  
13 marketed as a healthy superfood. Health claims asserted for molasses include diabetes-friendly  
14 sweetener, bone booster, good for the blood and packed with potassium. Molasses is also touted  
15 as a pregnancy power food (*see* <https://tinyurl.com/y8wbey8n>) and specifically sold as a health  
16 supplement for pregnant women because of its vitamin and nutrient content.

17 27. Defendants’ Molasses contain sufficient quantities of Lead such that consumers,  
18 including pregnant women and children, who consume molasses are exposed to a significant  
19 amount of Lead. The primary route of exposure for the violations is direct ingestion when people  
20 consume molasses by itself as a supplement, as a sweetener in foods such as coffee, tea or cereal,  
21 or as a baking ingredient in other foods. These exposures occur in homes, workplaces and  
22 everywhere else throughout California where molasses is consumed.

23 28. Defendants’ do not provide any clear and reasonable warning regarding the  
24 carcinogenic or reproductive hazards of Lead in the molasses that they sell.

25 29. Any person acting in the public interest has standing to enforce violations of  
26 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
27 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
28 within such time. Health & Safety Code §25249.7(d).

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

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

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

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1 33. Defendants both know and intend that individuals, including pregnant women and  
2 children, will consume molasses, thus exposing them to Lead.

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

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

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

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

15 37. CEH realleges and incorporates by reference as if specifically set forth herein  
16 Paragraphs 1 through 36, inclusive.

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

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

21 40. Defendants know that average use of their molasses that is then sold by  
22 Defendants or their downstream customers as a finished product will expose users of molasses to  
23 Lead. Defendants intend that their molasses be used in a manner that results in exposures to Lead  
24 from their molasses.

25 41. Defendants have failed, and continue to fail, to provide clear and reasonable  
26 warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of their  
27 molasses.

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