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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RAMY KAUFLE EDEN

Plaintiff,

v.

HATHI BRAND FOODS INC; SD
PIONEER FOOD INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2023-00031915-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

(Violation of Health & Safety Code section
25249.5, *et seq.*)

1 Plaintiff Ramy Kaufler Eden (“Plaintiff”), by and through his attorneys, alleges the following
2 based on information and belief and investigation of counsel:

3 **INTRODUCTION**

4 1. Defendant Hathi Brand Foods Inc (“Hathi”) manufactures a tamarind food product
5 under the “Captain Cook” brand which it imports into California, and markets, distributes, and sells
6 into California (“Product”).

7 2. Defendant SD Pioneer Food Inc. (“Pioneer”) markets, distributes, and sells the Product
8 in California.

9 3. Hathi and Pioneer are collectively referred to herein as “Defendants.”

10 4. Unfortunately, the Product contains the chemical Lead, which is known to the State of
11 California to cause cancer and birth defects and other reproductive harm. By marketing, distributing,
12 and selling the Product to California consumers, Defendants expose individuals—including children
13 and pregnant women who are particularly susceptible to Lead’s toxic effects—to Lead without
14 warning of such exposure. This Complaint (“Complaint”) seeks to remedy Defendants’ failure to warn
15 of these toxic exposures and hold Defendants accountable for violating California’s Proposition 65.

16 5. California’s Proposition 65, codified in California Health & Safety Code section
17 25249.5, *et seq.*, makes it unlawful for businesses to knowingly and intentionally expose individuals
18 in California to chemicals known to the State to cause cancer, birth defects or other reproductive harm
19 without first providing clear and reasonable warnings to the exposed individuals.

20 6. Defendants, either directly or through their downstream customers, introduce the
21 Product—which contains significant quantities of Lead—into the California marketplace, thereby
22 exposing the Product’s consumers to Lead. Defendants do so without providing any warnings
23 whatsoever about the hazards associated with Lead exposure resulting from consumption of the
24 Product. Defendants’ conduct thus violates the warning provision of Proposition 65. *See* Health & Saf.
25 Code § 25249.6.

26 **PARTIES**

27 7. Plaintiff is a citizen of the State of California acting in the interest of the general public
28 to promote awareness of exposures to toxic chemicals in products sold in California and to improve

1 human health by reducing hazardous substances contained in such products. He brings this action in
2 the public interest pursuant to Health & Safety Code section 25249.7(d).

3 8. Hathi is a California corporation and is a “person in the course of doing business”
4 within the meaning of Health & Safety Code section 25249.11. Hathi manufactures, imports, markets,
5 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies by its
6 conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the
7 State of California.

8 9. Pioneer is a California corporation and is a “person in the course of doing business”
9 within the meaning of Health & Safety Code section 25249.11. Pioneer markets, distributes, sells,
10 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that it
11 markets, distributes, sells, and/or offers the Product for sale or use in the State of California.

12 10. DOES 1 through 50 are each a “person in the course of doing business” within the
13 meaning of Health & Safety Code section 25249.11. Each of DOES 1 through 50 manufactures,
14 imports, markets, distributes, sells, and/or offers the Product for sale or use in the State of California,
15 or implies by its conduct that it manufactures, imports, markets, distributes, sells, and/or offers the
16 Product for sale or use in the State of California.

17 11. The true names of DOES 1 through 50 are either unknown to Plaintiff at this time or
18 the applicable time period before which Plaintiff may file a Proposition 65 action against them has not
19 yet run. When their identities are ascertained or the applicable time period before which Plaintiff may
20 file a Proposition 65 action against them has run, the Complaint shall be amended to reflect their true
21 names. All references to “Defendants” herein refer to Hathi, Pioneer, and DOES 1 through 50
22 collectively.

23 **JURISDICTION AND VENUE**

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

28 13. This Court has jurisdiction over each of the Defendants because each is either a citizen

1 of the State of California, has sufficient minimum contacts with the State of California, and/or
2 intentionally avails itself of the California market through the distribution, sale, and/or marketing of
3 the Product in California or by having such other contacts with California so as to render the exercise
4 of jurisdiction over it by the California courts consistent with traditional notions of fair play and
5 substantial justice.

6 14. Venue is proper in San Diego County Superior Court because one or more of the
7 violations arise in the County of San Diego.

8 **STATUTORY BACKGROUND**

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

12 16. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by
13 the State of California as known to cause cancer, birth defects or other reproductive harm above certain
14 levels without a “clear and reasonable warning” unless the business responsible for the exposure can
15 prove that it fits within a statutory exemption. Health & Safety Code section 25249.6 states, in
16 pertinent part: “No person in the course of doing business shall knowingly and intentionally expose
17 any individual to a chemical known to the state to cause cancer or reproductive toxicity without first
18 giving clear and reasonable warning to such individual” Health & Saf. Code § 25249.6

19 17. An exposure to a listed chemical may come through ingestion of food products
20 containing the listed chemical. Cal. Code Regs. tit. 27, § 25102(i).

21 18. Proposition 65 provides that any “person who violates or threatens to violate” the
22 statute may be enjoined in a court of competent jurisdiction. Health & Saf. Code § 25249.7. Violators
23 are liable for civil penalties of up to \$2,500 per day for each violation of the Act. *See id.* Any person
24 acting in the public interest has standing to enforce violations of Proposition 65 provided that such
25 person has supplied the requisite public enforcers with a valid 60-Day Notice of Violation and such
26 public enforcers are not diligently prosecuting the action within such time. *See* Health & Saf. Code §
27 25249.7(d).

28 19. On February 27, 1987, the State of California officially listed Lead as a chemical

1 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant under
2 three subcategories: “developmental reproductive toxicity,” which means harm to the developing
3 fetus, “female reproductive toxicity,” which means harm to the female reproductive system, and “male
4 reproductive toxicity,” which means harm to the male reproductive system. Cal. Code Regs. tit. 27, §
5 27001(c).

6 20. On February 27, 1988, one year after it was listed as a chemical known to cause
7 reproductive toxicity, lead became subject to the clear and reasonable warning requirement regarding
8 reproductive toxicants under Proposition 65. *See* Health & Saf. Code § 25249.10(b).

9 **FACTUAL BACKGROUND**

10 21. As noted above, Defendants manufacture, import, market, distribute, sell, and/or offer
11 the Product for sale or use in the State of California.

12 22. Unfortunately, at all relevant times—including the period from at least one year
13 preceding the filing of this Complaint and continuing through the filing of this Complaint—the
14 Product contained sufficient quantities of Lead such that consumers, including pregnant women and
15 children, who consume it were exposed to a significant amount of Lead. The primary route of exposure
16 to Lead in the Product is through direct ingestion when people eat the Product. These exposures occur
17 throughout California wherever the Product is consumed.

18 23. At all relevant times—including the period from at least one year preceding the filing
19 of this Complaint and continuing through the filing of this Complaint—Defendants manufactured,
20 imported, distributed, sold, and/or offered to sell the Product in the State of California without
21 providing the requisite Lead exposure warning information.

22 24. At all such times, Defendants failed to provide any clear and reasonable warning
23 regarding the reproductive hazards of Lead in the Product.

24 25. At all such times, Defendants knowingly and intentionally exposed consumers of the
25 Product to Lead without first giving a clear and reasonable warning to such consumers.

26 26. At all such times, Defendants were each a “person in the course of doing business”
27 within the meaning of Health & Safety Code section 25249.11. During such times, as a proximate
28 result of acts by Defendants, individuals throughout the State of California, including in San Diego

1 County, have been exposed to Lead via the Product without first being provided a clear and reasonable
2 warning concerning such exposures. The individuals subject to the violative exposures include normal
3 and foreseeable consumers and users of the Product.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 27. More than sixty days prior to filing this Complaint, Plaintiff served a 60-Day Notice of
6 Violation of Proposition 65 (“Notice”) upon the named Defendants and on the California Attorney
7 General, the District Attorneys of every county in California, and the City Attorneys of every
8 California city with a population greater than 750,000 persons.

9 28. The Notice complied with all procedural requirements of Proposition 65, including the
10 attachment of a Certificate of Merit.

11 29. After receiving the Notice, and to the best of Plaintiff’s information and belief, as of
12 the filing of this Complaint, none of the noticed public enforcement agencies have commenced and
13 diligently prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
14 violations set forth in the Notice.

15 30. Plaintiff is commencing this action more than sixty days from the date of the Notice to
16 Defendants.

17 **FIRST CAUSE OF ACTION**

18 **(Against Defendants for Violations of Health & Safety Code Section 25249.6)**

19 31. Plaintiff hereby repeats and incorporates by reference the preceding paragraphs of this
20 Complaint as though fully set forth herein.

21 32. Defendants have, at all times mentioned herein, each acted as a manufacturer, importer,
22 distributor, marketer, seller, and/or offeror of the Product in the State of California without providing
23 the requisite Lead exposure warning information and acted as a person in the course of doing business
24 within the meaning of Health & Safety Code section 25249.11.

25 33. The Product contains Lead, a hazardous chemical known to the State of California to
26 be injurious to human health.


27 34. Defendants know that consumers of the Product will be exposed to Lead when the
28 consumers eat the Product.

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5. That the Court grant such other and further relief as may be just and proper.

Dated: July 26, 2023

JARRETT CHARO APC

By: 
Jarrett S. Charo, Esq.
Attorneys for Plaintiff