

1 LEXINGTON LAW GROUP
Eric S. Somers, State Bar No. 139050
2 Joseph Mann, State Bar No. 207968
503 Divisadero Street
3 San Francisco, CA 94117
Telephone: (415) 913-7800
4 Facsimile: (415) 759-4112
esomers@lexlawgroup.com
5 jmann@lexlawgroup.com

6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

SEP 02 2018

CLERK OF THE SUPERIOR COURT
By Xian-Xi Bowie

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)
14 Plaintiff,)
15 v.)
16 ACH FOOD COMPANIES, INC.; DEEP)
17 FOODS INC.; CHETAK NEW YORK, L.L.C.;)
18 MAYA KAIMAL FINE INDIAN FOODS, LLC;)
19 SUNFLOWER FARMERS MARKETS, LLC;)
and DOES 1 through 200, inclusive,)
20 Defendants.)

Case No. RG16829822

**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
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), 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 Indian pastes and sauces containing ginger that are sold by Defendants (the "Products").
10 Consumers, including pregnant women and children, are exposed to Lead when they consume
11 the Products.

12 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
15 first providing clear and reasonable warnings to exposed individuals. Defendants introduce
16 Products containing significant quantities of Lead into the California marketplace, thereby
17 exposing consumers of their Products, many of whom are pregnant women and children, to Lead.

18 3. Despite the fact that Defendants expose pregnant women, children and
19 other consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
20 reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the
21 warning provision of Proposition 65. Health & Safety Code §25249.6.

22 PARTIES

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
24 non-profit corporation dedicated to protecting the public from environmental health hazards and
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
26 State of California. CEH is a "person" within the meaning of Health & Safety Code
27 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
28 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy

1 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
2 cases have resulted in significant public benefit, including the reformulation of thousands of
3 products to remove toxic chemicals and to make them safer. CEH also provides information to
4 Californians about the health risks associated with exposure to hazardous substances, where
5 manufacturers and other responsible parties fail to do so.

6 5. Defendant ACH FOOD COMPANIES, INC. is a person in the course of
7 doing business within the meaning of Health & Safety Code §25249.11. ACH FOOD
8 COMPANIES, INC. manufactures, distributes and/or sells the Products for sale and use in
9 California.

10 6. Defendant DEEP FOODS INC. is a person in the course of doing business
11 within the meaning of Health & Safety Code §25249.11. DEEP FOODS INC. manufactures,
12 distributes and/or sells the Products for sale and use in California.

13 7. Defendant CHETAK NEW YORK, L.L.C. is a person in the course of
14 doing business within the meaning of Health & Safety Code §25249.11. CHETAK NEW
15 YORK, L.L.C. manufactures, distributes and/or sells the Products for sale and use in California.

16 8. Defendant MAYA KAIMAL FINE INDIAN FOODS, LLC is a person in
17 the course of doing business within the meaning of Health & Safety Code §25249.11. MAYA
18 KAIMAL FINE INDIAN FOODS, LLC manufactures, distributes and/or sells the Products for
19 sale and use in California.

20 9. Defendant SUNFLOWER FARMERS MARKETS, LLC is a person in the
21 course of doing business within the meaning of Health & Safety Code §25249.11.
22 SUNFLOWER FARMERS MARKETS, LLC manufactures, distributes and/or sells the Products
23 for sale and use in California.

24 10. DOES 1 through 200 are each a person in the course of doing business
25 within the meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture,
26 distribute and/or sell the Products for sale or use in California.

27 11. The defendants identified in Paragraphs 5 through 9 and DOES 1 through
28 200 are collectively referred to herein as “Defendants.”

1 18. On February 27, 1987, the State of California officially listed lead as a
2 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
3 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
4 the developing fetus, “female reproductive toxicity,” which means harm to the female
5 reproductive system, and “male reproductive toxicity,” which means harm to the male
6 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,
7 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
8 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
9 under Proposition 65. *Ibid.*; Health & Safety Code §25249.10(b).

10 19. On October 1, 1992, the State of California officially listed lead and lead
11 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
12 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
13 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
14 §27001(b); Health & Safety Code §25249.10(b).

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

28

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

11 22. Lead exposures for pregnant women are also of particular concern in light
12 of evidence that even short term lead exposures *in utero* may have long-term harmful effects.
13 *See, e.g.,* Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant
14 Mental Development," *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *et al.*,
15 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*
16 *Health Perspectives*, 114:5, 2006. Increased lead exposure during pregnancy has also been
17 shown to cause increased risk of premature birth and increased blood pressure in both the mother
18 during pregnancy and the child after birth. *See, e.g.,* Vigeh, M., *et al.*, "Blood Lead at Currently
19 Acceptable Levels May Cause Preterm Labour," *Occupational & Environmental Medicine*,
20 68:231-234, 2010; Zhang, A., *et al.*, "Association Between Prenatal Lead Exposure and Blood
21 Pressure in Children," *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, "Low-
22 Level Lead Exposure and Elevations in Blood Pressure During Pregnancy," *Environmental*
23 *Health Perspectives*, 119:5, 2011.

24 23. Defendants' Products contain sufficient quantities of Lead such that
25 consumers, including pregnant women and children, who consume Products are exposed to a
26 significant amount of Lead. The primary route of exposure for the violations is direct ingestion
27 when consumers eat Products. These exposures occur in homes, workplaces and everywhere else
28 throughout California where the products are consumed.

1 24. No clear and reasonable warning is provided with Defendants' Products
2 regarding the carcinogenic or reproductive hazards of Lead.

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

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

17 27. CEH also sent a Certificate of Merit for each Notice to the California
18 Attorney General, to the District Attorneys of every county in California, to the City Attorneys of
19 every California city with a population greater than 750,000 and to each of the named
20 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each
21 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with
22 relevant and appropriate experience or expertise who reviewed facts, studies or other data
23 regarding the exposures to Lead alleged in each Notice; and (2) based on the information
24 obtained through such consultations, believes that there is a reasonable and meritorious case for a
25 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
26 & Safety Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney
27 General included factual information – provided on a confidential basis – sufficient to establish
28

1 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
2 and the facts, studies or other data reviewed by such persons.

3 28. None of the public prosecutors with the authority to prosecute violations
4 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
5 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in each
6 of CEH's Notices.

7 29. Defendants both know and intend that individuals, including pregnant
8 women and children, will consume the Products, thus exposing them to Lead.

9 30. Under Proposition 65, an exposure is "knowing" where the party
10 responsible for such exposure has:

11 knowledge of the fact that a[n] . . . exposure to a chemical listed
12 pursuant to [Health & Safety Code §25249.8(a)] is occurring. No
13 knowledge that the . . . exposure is unlawful is required.

14 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
16 §12601).

17 31. Defendants have been informed of the Lead in their Products by the 60-
18 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

19 32. Defendants also have constructive knowledge that their Products contain
20 Lead due to the widespread media coverage concerning the problem of Lead in consumer
21 products in general, and in food products made with ginger in particular.

22 33. As companies that manufacture, import, distribute and/or sell the Products
23 for use in the California marketplace, Defendants know or should know that the Products contain
24 Lead and that individuals who consume the Products will be exposed to Lead. The Lead
25 exposures to consumers who consume the Products are a natural and foreseeable consequence of
26 Defendants' placing the Products into the stream of commerce.
27
28

1 **PRAYER FOR RELIEF**

2 CEH prays for judgment against Defendants as follows:

3 1. 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 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
7 preliminarily and permanently enjoin Defendants from offering the Products for sale in
8 California without either reformulating the Products such that no Proposition 65 warnings are
9 required or providing prior clear and reasonable warnings, as CEH shall specify in further
10 application to the Court;

11 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
12 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
13 Products sold by Defendants, as CEH shall specify in further application to the Court;

14 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
15 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

18
19 Dated: September 2, 2016

Respectfully submitted,

20 LEXINGTON LAW GROUP

21
22 

23 Eric S. Somers
24 Attorneys for Plaintiff
25 CENTER FOR ENVIRONMENTAL HEALTH