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ENDORSED
FILED
Superior Court of California
County of San Francisco
MAR 18 2013
CLERK OF THE COURT
BY: ROSALY DE LA VEGA
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 CGC-13-529495

15 WHITNEY R. LEEMAN, PH.D.,

16 Plaintiff,

17 v.

18 FARMER BROS. CO.; and DOES 1-150,
19 inclusive,

20 Defendants.

21 Case No. _____

22 **COMPLAINT FOR CIVIL PENALTIES
23 AND INJUNCTIVE RELIEF**

24 (Health & Safety Code. § 25249.6 et seq.)

25 BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN, Ph.D. in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the presence of a carcinogenic chemical known as
5 4-methylimidazole (“4-MEI” or “4MI”) found in certain food extracts, flavors, and colorings
6 sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to 4-MEI, a cancer-causing chemical present
9 in food extracts, flavors, and colorings manufactured, distributed, and offered for sale or use to
10 consumers throughout the State of California.

11 3. Detectable levels of 4-MEI are commonly found in food extracts, flavors, and
12 colorings that defendants manufacture, distribute, and offer for sale to consumers throughout the
13 State of California.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
15 Health and Safety Code § 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of
16 doing business shall knowingly and intentionally expose any individual to a chemical known to
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual . . .” Health & Safety Code § 25249.6.

19 5. Pursuant to Proposition 65, on January 7, 2011, California identified and listed
20 4-MEI as a chemical known to cause cancer. 4-MEI became subject to the “clear and
21 reasonable warning” requirements of the act one year later on January 7, 2012. Cal. Code Regs.
22 tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

23 6. Defendants manufacture, distribute, and sell food extracts, flavors, and colorings
24 that contain 4-MEI at levels that require a warning under Proposition 65, including, but not
25 limited to, the *Sierra Brand Premium Products Imitation Maple Flavor, #011031 (#8 40825*
26 *00122 2)*. All such food extracts, flavors, and colorings containing 4-MEI are referred to
27 collectively hereinafter as “PRODUCTS.”
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1 7. Defendants' failure to warn consumers in the state of California about their
2 exposure to 4-MEI in conjunction with defendants' sale of the PRODUCTS is a violation of
3 Proposition 65, and subjects defendants to enjoinder of such conduct as well as civil penalties
4 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

5 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
6 permanent injunctive relief to compel defendants to provide purchasers or consumers of the
7 PRODUCTS with the required warning regarding the health hazards of 4-MEI. Health & Safety
8 Code § 25249.7(a).

9 9. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil
10 penalties against defendants for their violations of Proposition 65.

11 **PARTIES**

12 10. Plaintiff WHITNEY R. LEEMAN, Ph.D. is a citizen of the state of California
13 who is dedicated to protecting the health of California citizens through the elimination or
14 reduction of toxic exposures from consumer products and she brings this action in the public
15 interest pursuant to Health and Safety Code § 25249.7(d).

16 11. Defendant FARMER BROS. CO. ("FARMER BROS.") is a person in the course
17 of doing business within the meaning of Health and Safety Code § 25249.11(b).

18 12. FARMER BROS. offers the PRODUCTS for sale in the state of California without
19 a "clear and reasonable warning."

20 13. Defendants DOES 1-150 are each persons in the course of doing business within
21 the meaning of Health and Safety Code § 25249.11(b), which manufacture, distribute, and/or
22 offer for sale the PRODUCTS in the state of California. At this time, the true names of
23 defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who, therefore, sues said
24 defendants by their fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff is
25 informed and believes, and on that basis alleges, that each of the fictitiously named defendants
26 is responsible for the acts and occurrences alleged herein. When ascertained, their true names
27 shall be reflected in an amended complaint.
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1 **VENUE AND JURISDICTION**

2 14. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
3 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred, and continue to occur, in San
5 Francisco County, and/or because FARMER BROS. conducted, and continues to conduct,
6 business in this county with respect to the PRODUCTS.

7 15. The California Superior Court has jurisdiction over this action pursuant to
8 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
9 in all causes except those given by statute to other trial courts.” The statute under which this
10 action is brought does not specify any other basis of subject matter jurisdiction.

11 16. The California Superior Court has jurisdiction over defendants based on
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
13 association that is a citizen of the state of California, has sufficient minimum contacts in the
14 state of California, and/or otherwise purposefully avails itself of the California market.
15 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65 - Against All Defendants)**

19 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 16, inclusive.

21 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
22 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
23 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
24 harm.”

25 19. Proposition 65 states, “[n]o person in the course of doing business shall
26 knowingly and intentionally expose any individual to a chemical known to the state to cause
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

3 20. On December 21, 2012, plaintiff’s sixty-day notice of violation—together with
4 the certificate of merit required by Health & Safety Code § 25249.7(d)(1)—was served on
5 FARMER BROS. and the requisite public prosecutors pursuant to California Code of
6 Regulations title 27, § 25903(c)(3), stating that, as a result of defendants’ sales of the
7 PRODUCTS containing 4-MEI, purchasers and consumers in the state of California were being
8 exposed to 4-MEI resulting from their reasonably foreseeable use and consumption of the
9 PRODUCTS, without having been provided with a “clear and reasonable warning” regarding
10 such toxic exposures, as required by Proposition 65.

11 21. Defendants have engaged in the manufacture, distribution, and offering of the
12 PRODUCTS for sale or consumption in violation of Health and Safety Code § 25249.6, and
13 defendants’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
14 notice of violation. As such, defendants’ violations are ongoing and continuous in nature, and
15 will continue to occur in the future.

16 22. After receiving the claims asserted in the sixty-day notice of violation, the
17 appropriate public enforcement agencies have failed to commence and diligently prosecute a
18 cause of action against defendants under Proposition 65.

19 23. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
20 or use in California by defendants contain 4-MEI such that they require a “clear and reasonable”
21 warning under Proposition 65.

22 24. Defendants knew or should have known that the PRODUCTS they manufacture,
23 import, distribute, sell, and offer for sale or use in California contain 4-MEI.

24 25. 4-MEI is present in the PRODUCTS in such a way as to expose individuals to the
25 4-MEI through ingestion during reasonably foreseeable use of the PRODUCTS.

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1 26. The normal and reasonably foreseeable consumption of the PRODUCTS have
2 caused, and continue to cause, consumer exposures to 4-MEI, as such exposures are defined by
3 California Code of Regulations title 27, § 25602(b).

4 27. Defendants had knowledge that the normal and reasonably foreseeable
5 consumption of the PRODUCTS expose individuals to 4-MEI through ingestion.

6 28. Defendants intended that such exposures to 4-MEI from the reasonably
7 foreseeable consumption of the PRODUCTS would occur by their deliberate, non-accidental
8 participation in the manufacturing, distribution and/or offering of the PRODUCTS for sale to
9 individuals in the state of California.

10 29. Defendants failed to provide a “clear and reasonable warning” to those consumers
11 and other individuals in the state of California who were or who would become exposed to
12 4-MEI through ingestion during the consumption of the PRODUCTS.

13 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
14 directly by California voters, individuals exposed to 4-MEI through ingestion resulting from the
15 consumption of the PRODUCTS sold by defendants without a “clear and reasonable warning,”
16 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
17 adequate remedy at law.

18 31. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
19 described acts, defendants are liable for a maximum civil penalty of \$2,500 per day for each
20 violation.

21 32. As a consequence of the above-described acts, Health and Safety Code §
22 25249.7(a) also specifically authorizes the Court to grant injunctive relief against defendants.

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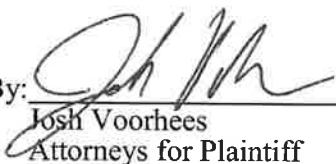
PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against defendants as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties against defendants in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin defendants from preparing, distributing, or offering the PRODUCTS for sale or consumption in California without first providing a “clear and reasonable warning” as defined by California Code of Regulations title 27, § 25601 et seq., as to the harms associated with exposures to 4-MEI;
3. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: March 13, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 
Josh Voorhees
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.