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San Francisco County Superior Court
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CLERK OF THE COURT
BY: Marilyn Owen
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

16 PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. KAMALA D.
17 HARRIS, Attorney General,

18 Plaintiff,
19 v.
20 DAKOTA BROTHERS dba MARINA
FOODS; FOOD MARKET MANAGEMENT,
21 INC.; ISLAND PACIFIC SUPERMARKET;
JFC INTERNATIONAL, INC.;
22 KAM LEE YUEN TRADING CO. INC.;
LONGCHAMP CORP., dba LION
23 SUPERMARKET; REED'S, INC.;
TARGET CORP.; TAWA SUPERMARKET,
24 dba 99 RANCH MARKET; TRADER JOE'S
COMPANY; and WHOLE FOODS
25 MARKET CALIFORNIA, INC.,

26 Defendants.

Case No. CGC-13-531045

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

Pursuant to Govt. Code §6103
Exempt From Fees

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I. INTRODUCTION

1. This complaint seeks to remedy the Defendants' failure to warn consumers that lead is contained in candy and food products that Defendants sell, manufacture, or distribute for sale in the state of California.

2. Lead is a chemical known to the State of California to cause cancer, birth defects, and other reproductive harm.

3. Defendants manufacture, distribute or sell products intended for human consumption including: (i) ginger candies and other food products containing ginger and/or (ii) plum candies and other products containing plums ("Plum and Ginger Products" or "Products").

4. Laboratory testing shows that these Plum and Ginger Products contain lead.

5. Individuals who consume these Products are exposed to lead. The primary route of exposure is through direct ingestion of Defendants' Products.

6. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide a "clear and reasonable warning" before exposing individuals to lead.

7. Defendants have not provided a clear and reasonable warning to California consumers that exposure to lead will result from consumption of the Plum and Ginger Products that Defendants manufacture, distribute and/or sell in the state of California.

II. PARTIES

A. Plaintiff

8. Plaintiff is the People of the State of California, by and through the Attorney General of California, Kamala D. Harris. Health and Safety Code section 25249.7(c) provides that actions to enforce Proposition 65 may be brought by the Attorney General in the name of the People of the State of California. Business and Professions Code sections 17200 *et seq.* provide that actions to enforce that statute may be brought by the Attorney General in the name of the People of the State of California.

B. Defendants

9. Defendant DAKOTA BROTHERS, INC., dba MARINA FOODS (DAKOTA), is

1 a "person in the course of doing business" within the meaning of Health and Safety Code section
2 25249.6. DAKOTA manufactures, distributes and/or sells Products that contain lead, without
3 providing a clear and reasonable warning as required by Health and Safety Code section 25249.6.
4 These Products include, but are not limited to *Sweet Fruit Ginger* and *Sweet Fruit Licorice*
5 *Lemon Ginger*.

6 10. Defendant FOOD MARKET MANAGEMENT, INC. (FOOD MARKET) is a
7 "person in the course of doing business" within the meaning of Health and Safety Code section
8 25249.6. FOOD MARKET manufactures, distributes and/or sells Products in the State of
9 California that contain lead, without providing a clear and reasonable warning as required by
10 Health and Safety Code section 25249.6. These Products include, but are not limited to: *The*
11 *Ginger People Baker's Cut Crystallized Ginger Chips*.

12 11. Defendant ISLAND PACIFIC SUPERMARKET (ISLAND PACIFIC), is a
13 "person in the course of doing business" within the meaning of Health and Safety Code section
14 25249.6. ISLAND PACIFIC manufactures, distributes and/or sells Products in the State of
15 California that contain lead, without providing a clear and reasonable warning as required by
16 Health and Safety Code section 25249.6. These Products include, but are not limited to: *Dried*
17 *Salted Prune*.

18 12. Defendant JFC INTERNATIONAL, INC. (JFC), is a "person in the course of
19 doing business" within the meaning of Health and Safety Code section 25249.6. JFC
20 manufactures, distributes and/or sells Products in the State of California that contain lead, without
21 providing a clear and reasonable warning as required by Health and Safety Code section 25249.6.
22 These Products include, but are not limited to: *Dynasty Sugar Ginger*.

23 13. Defendant KAM LEE YUEN TRADING CO. INC., (KAM LEE YUEN), is a
24 "person in the course of doing business" within the meaning of Health and Safety Code section
25 25249.6. KAM LEE YUEN manufactures, distributes and/or sells Products in the State of
26 California that contain lead, without providing a clear and reasonable warning as required by
27 Health and Safety Code section 25249.6. These Products include, but are not limited to: *Ginger*
28 *Candy, Plum Candy* and *Red Plum Candy*.

1 14. Defendant LONGCHAMP CORP., dba LION SUPERMARKET (LION) is a
2 “person in the course of doing business” within the meaning of Health and Safety Code section
3 25249.6. LION manufactures, distributes and/or sells Products in the State of California that
4 contain lead, without providing an clear and reasonable warning as required by Health and Safety
5 Code section 25249.6. These Products include, but are not limited to *Sweet Fruit Ginger,*
6 *Seedless Plum, Sweet Fruit Sweet Plum, Sweet Fruit Dried Plum.*

7 15. Defendant REED’S, INC. (REED’S), is a “person in the course of doing business”
8 within the meaning of Health and Safety Code section 25249.6. REED’S manufactures,
9 distributes and/or sells Products in the State of California that contain lead, without providing a
10 clear and reasonable warning as required by Health and Safety Code section 25249.6. These
11 Products include, but are not limited to: *Reed’s Crystallized Ginger.*

12 16. Defendant TARGET CORPORATION (TARGET) is a “person in the course of
13 doing business” within the meaning of Health and Safety Code section 25249.6. TARGET
14 manufactures, distributes and/or sells Products in the State of California that contain lead, without
15 providing an clear and reasonable warning as required by Health and Safety Code section
16 25249.6. These Products include, but are not limited to: *Archer Farms Crystallized Ginger.*

17 17. Defendant TAWA SUPERMARKET, INC., dba 99 RANCH MARKET (TAWA),
18 is a “person in the course of doing business” within the meaning of Health and Safety Code
19 section 25249.6. TAWA manufactures, distributes and/or sells Products in the State of California
20 that contain lead, without providing a clear and reasonable warning as required by Health and
21 Safety Code section 25249.6. These Products include, but are not limited to: *Red Lantern Plum*
22 *Candy, Sliced Sweet Ginger, Sweet and Sour Prune, Sweet Fruit Dried Plum, Dried Plum, Dried*
23 *Seedless Plum, Kan Rose Plum and Preserved Plum.*

24 18. Defendant TRADER JOE’S COMPANY (TRADER JOE’S) is a “person in the
25 course of doing business” within the meaning of Health and Safety Code section 25249.6.
26 TRADER JOE’S manufactures, distributes and/or sells Products in the State of California that
27 contain lead, without providing a clear and reasonable warning as required by Health and Safety
28 Code section 25249.6. These Products include, but are not limited to: *Uncrystallized Candied*

1 *Ginger.*

2 19. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. (WHOLE FOODS)
3 is a "person in the course of doing business" within the meaning of Health and Safety Code
4 section 25249.6. WHOLE FOODS manufactures, distributes and/or sells Products in the State of
5 California that contain lead, without providing a clear and reasonable warning as required by
6 Health and Safety Code section 25249.6. These Products include, but are not limited to: *The*
7 *Ginger People Baker's Cut Crystallized Ginger Chips* and *Whole Foods Bulk Ginger*.

8 20. Defendants DOES 1 through 200 are business entities engaged in the manufacture,
9 distribution and/or sale of Plum and/or Ginger Products, intended for human consumption, that
10 contain Lead. Individuals who consume such Products are exposed to Lead through direct
11 ingestion. As part of their business activities, DOES 1 through 200 cause consumers within the
12 State of California to be exposed to Lead without having been provided with a clear and
13 reasonable warning as required by Health and Safety Code section 25249.6. The names and
14 identities of defendants DOES 1 through 200 are unknown to Plaintiff at this time. When they
15 become known, the complaint will be amended to state their names and identities.

16 III. JURISDICTION AND VENUE

17 21. This Court has jurisdiction over this matter pursuant to California Constitution
18 Article VI, section 10, because this case is a cause not given by statute to other trial courts.

19 22. This Court has jurisdiction over each defendant named above, because each is a
20 business entity that does sufficient business and/or has sufficient minimum contacts in California,
21 or otherwise intentionally avails itself of the California market through the manufacture,
22 distribution, sale and/or marketing of products and service in California, and the use of its
23 products and services in California, to render the exercise of jurisdiction over it by the California
24 courts consistent with traditional notions of fair play and substantial justice.

25 23. Venue is proper in San Francisco Superior Court because one or more violations of
26 law stated herein occurred in the County of San Francisco.

27 IV. STATUTORY BACKGROUND

28 A. Proposition 65

1 24. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative
2 statute passed as "Proposition 65" by a vote of the people in November of 1986.

3 25. The warning requirement of Proposition 65 is contained in Health and Safety Code
4 section 25249.6, which provides:

5 No person in the course of doing business shall knowingly and intentionally
6 expose any individual to a chemical known to the state to cause cancer or
7 reproductive toxicity without first giving clear and reasonable warning to such
8 individual, except as provided in Section 25249.10.

9 26. An exposure to a chemical in a consumer product is one "which results from a
10 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
11 consumer good, or any exposure that results from receiving a consumer service." (Cal. Code
12 Regs., tit. 27, § 25602, subd. (b).)

13 27. Proposition 65 establishes a procedure by which the state is to develop a list of
14 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code,
15 § 25249.8.) No warning need be given concerning a listed chemical until one year after the
16 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

17 28. Any person "violating or threatening to violate" the statute may be enjoined in any
18 court of competent jurisdiction. (Health & Safety Code, § 25249.7.) To "threaten to violate" is
19 defined to mean "to create a condition in which there is a substantial probability that a violation
20 will occur." (*Id.*, § 25249.11(e).) In addition, violators are liable for civil penalties of up to
21 \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7(b).) Actions to
22 enforce the law "may be brought by the Attorney General in the name of the People of the State
23 of California" (*Id.*, § 25249.7(c).)

24 29. The Attorney General may "seek and recover costs and attorney's fees on behalf of
25 any party who provides a notice pursuant to subdivision (d) and who renders assistance in that
26 action." (*Id.*, § 25249.7, subd. (j).)

27 **B. The Unfair Competition Act**

28 30. California Business and Professions Code section 17200 provides that "unfair

1 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section
2 17203 of the Business and Professions Code provides that “(a)ny person performing or proposing
3 to perform an act of unfair competition within this state may be enjoined in any court of
4 competent jurisdiction.”

5 31. Unlawful acts under the statute include any act that is unlawful that is conducted
6 as part of business activity, and therefore include violations of Proposition 65.

7 32. Section 17206(a) provides that any person violating Section 17200 “shall be liable
8 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,
9 which shall be assessed and recovered in a civil action brought in the name of the people of the
10 State of California by the Attorney General or by any district attorney.” Under section 17205,
11 these penalties are “cumulative to each other and to the remedies or penalties available under all
12 other laws of this state.”

13 V. GENERAL ALLEGATIONS

14 33. “Lead” was placed on the Governor's list of chemicals known to the State of
15 California to cause birth defects or other reproductive harm February 27, 1987. It is specifically
16 identified under three subcategories: “developmental reproductive toxicity,” which means harm to
17 the developing fetus, “female reproductive toxicity,” which means harm to the female
18 reproductive system, and “male reproductive toxicity,” which means harm to the male
19 reproductive system. (Cal. Code Regs., tit. 27, § 27001, subd. (c).)

20 34. “Lead and Lead Compounds” were placed on the Governor's list of chemicals
21 known to the State of California to cause cancer on October 1, 1992.

22 35. Lead is present in Products intended for human consumption that Defendants
23 manufacture, distribute and/or sell in California. Consumers are exposed to Lead through
24 ingestion of these Products.

25 36. Defendants and each of them have knowingly and intentionally exposed
26 individuals within the State of California to Lead.

27 37. Subsequent to four years prior to the filing of this complaint, each Defendant has
28 manufactured, distributed and/or sold Products containing Lead, with the intention that these

1 Products be sold and consumed in the State of California.

2 38. Each Defendant has failed to provide clear and reasonable warnings to consumers
3 within the State of California that the Products manufactured, distributed and/or sold by that
4 Defendant contain Lead, and that consumption of the Products results in exposure to Lead.

5 **VI. FIRST CAUSE OF ACTION**

6 (Against All Defendants for Violation of Proposition 65)

7 39. Plaintiff realleges Paragraphs 1 through 38, as if fully set forth herein.

8 40. By committing the acts alleged above, each 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 cancer and/or reproductive toxicity without first giving clear and reasonable
11 warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

12 41. Said violations render each Defendant liable to Plaintiff for civil penalties not to
13 exceed \$2,500 per day for each violation, as well as other remedies.

14 **VII. SECOND CAUSE OF ACTION**

15 (Against Each Defendant for Unlawful Business Practices
16 Consisting of Violations of Proposition 65)

17 42. Plaintiff realleges Paragraphs 1 through 41, as if fully set forth herein.

18 43. By committing the acts alleged above, each Defendant has engaged in unlawful
19 business practices which constitute unfair competition within the meaning of Business and
20 Professions Code sections 17200, *et seq.*

21 44. Said violations render each Defendant liable to Plaintiff for civil penalties not to
22 exceed \$2,500 per day for each violation.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays that the Court:

25 1. Pursuant to the First and Second Causes of Action, grant civil penalties according
26 to proof;

27 2. Pursuant to Health and Safety Code section 25249.7 and Business and Professions
28 Code section 17203, enter such temporary restraining orders, preliminary injunctions, permanent

1 injunctions, or other orders prohibiting defendants from exposing persons within the State of
2 California to Lead caused by the ingestion of their Products, without providing clear and
3 reasonable warnings, as Plaintiff shall specify in further application to the court;

4 3. Award Plaintiff costs of suit;

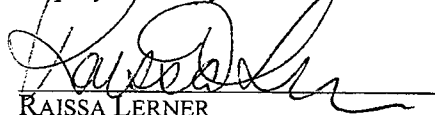
5 4. Award attorneys' fees and costs at the discretion of the Attorney General, pursuant
6 to Health and Safety Code section 25249.7(j); and

7 5. Grant such other and further relief as the court deems just and proper.

8 Dated: April 30, 2013

Respectfully Submitted,

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10 Attorney General of California
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12 Senior Assistant Attorney General
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