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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF ALAMEDA**

16 ENVIRONMENTAL LAW FOUNDATION,
17 on behalf of the General Public,

18 Plaintiff,

19 v.

20 Beech-Nut Nutrition Corp.; Core-Mark Holding
Company, Inc.; Del Monte Foods; Dole Packaged
21 Frozen Foods, Inc.; Gerber Products Company;
Golden Star Trading, Inc.; The Hain Celestial
22 Group, Inc.; J.M. Smucker Company; Kedem
Foods Products Int'l; Langer Juice Company, Inc.;
23 Seneca Foods Corp.; Lucerne Foods, Inc.;
Safeway, Inc.; Target Corp.; Raley's; Save Mart
24 Supermarkets; Smart & Final, Inc.; Stater Bros.
Markets; The Kroger Co.; Topco Associates, LLC;
25 Trader Joe's Company; Tree Top, Inc.; Truitt
Bros., Inc.; Walgreen Co.; Wal-Mart Stores, Inc.;
26 CVS Pharmacy, Inc.; Welch's Foods, Inc., A
Cooperative; Whole Foods Market, Inc.; and
27 DOES 1 through 200,

28 Defendants.

**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 28 2011

CLERK OF THE SUPERIOR COURT
By H. Lovell

Deputy

RC
Case No.: 11597384

**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF
AND CIVIL PENALTIES**

**(Based on Violations of California
Health and Safety Code § 25249.6 et seq.)**

1 Plaintiff, ENVIRONMENTAL LAW FOUNDATION, by its attorneys, brings this
2 action on behalf of the General Public on information and belief, and investigation of counsel,
3 except those allegations which pertain to the named Plaintiff or to its attorneys which are
4 alleged on personal knowledge, and hereby alleges as follows:

5 **INTRODUCTION**

6 1. This action seeks, among other things, injunctive relief and civil penalties to
7 remedy Defendants' failure to warn Californians that they and their children are exposed to
8 lead, a chemical known to the State of California to cause cancer and reproductive toxicity,
9 when they ingest defendants' foods and beverages. Defendants manufacture and/or distribute
10 foods and beverages that contain lead, many of which are marketed and intended for immediate
11 consumption by babies and toddlers. Defendants' foods and beverages that contain lead include
12 grape juice, packaged peaches, packaged pears, fruit cocktail, and the following foods for babies
13 and/or toddlers that include any of the following: carrots, pears, peaches and sweet potatoes.
14 The phrase "FOODS AND BEVERAGES" shall be used to collectively identify the food
15 categories at issue herein, with specific food categories applying to particular Defendants as set
16 forth in paragraphs 6-34.

17 2. There is no safe level of lead for children. Moreover, infants and fetuses are at
18 the greatest risk of harmful effects from lead exposure. Fetuses who are exposed to lead in the
19 womb may be born prematurely and have lower weights at birth. Lead exposure in the womb
20 and as an infant also slows mental development and causes lower intelligence later in childhood.
21 The scientific evidence documenting the association between lead exposure and harmful health
22 effects, particularly for young children, is extensive.

23 3. Proposition 65 is a right-to-know law. It requires businesses to warn California
24 consumers before exposing them to chemicals that cause birth defects or cancer. (The Safe
25 Drinking Water and Toxic Enforcement Act, California Health and Safety Code § 25249.5 *et*
26 *seq.*, hereinafter referred to as "Proposition 65.") In 1987, Governor Deukmejian declared lead
27 to be a reproductive toxicant subject to Proposition 65's warning requirements. In 1992,
28 Governor Wilson declared lead and lead compounds to be carcinogens subject to Proposition

1 65's warning requirements. Defendants' FOODS AND BEVERAGES cause exposure to lead
2 when ingested. Therefore, under Proposition 65, Defendants are required to provide a clear and
3 reasonable warning that ingestion of their FOODS AND BEVERAGES cause exposure to lead,
4 a chemical known to the State of California to cause cancer and birth defects. Defendants have
5 failed to provide the required warnings.

6 4. By exposing California consumers to lead without providing any warning,
7 Defendants have violated and will continue to violate Proposition 65. Plaintiff is therefore
8 entitled to civil penalties. Additionally, by committing the acts set forth herein, defendants have
9 violated Proposition 65 and will continue to do so unless enjoined. Therefore, Plaintiff is
10 entitled to injunctive, declaratory, and equitable relief to compel defendants to comply with the
11 requirements of Proposition 65 in their manufacturing and/or distribution and/or sale of FOODS
12 AND BEVERAGES that contain lead. Plaintiff, through this action, seeks to enjoin defendants
13 from exposing Californians to lead by ingesting Defendants' FOODS AND BEVERAGES
14 without being provided a clear a reasonable warning regarding the risks of cancer and
15 reproductive toxicity. Plaintiff also seeks the assessment of civil penalties.

16 **PARTIES**

17 5. Plaintiff ENVIRONMENTAL LAW FOUNDATION ("ELF") is a California
18 nonprofit organization founded on Earth Day in 1991. ELF has been committed to the
19 enforcement of environmental, toxics, and community right-to-know laws for 20 years. ELF is
20 dedicated to reducing health hazards to the public posed by lead, and particularly to protect
21 those with the least choice and greatest vulnerability to toxic risks: children, inner city dwellers,
22 and workers. ELF brings this action pursuant to California Health and Safety Code
23 § 25249.7(d) in the interest of the general public.

24 6. Defendant BEECH-NUT NUTRITION CORPORATION ("BEECH-NUT"), a
25 Nevada corporation with its principal place of business located at 100 Hero Drive, Amsterdam,
26 New York 12010, is a person in the course of doing business within the meaning of Health and
27 Safety Code § 25249.11. BEECH-NUT manufactures and/or distributes packaged carrots (for
28 babies and/or toddlers), packaged foods that include pears (for babies and/or toddlers), and

1 packaged sweet potatoes (for babies and/or toddlers) in California that expose individuals to
2 lead, including but not limited to Beech Nut Tender Sweet Carrots Stage 2; Beech Nut
3 Cinnamon Raisins & Pears, Stage 3; Beech Nut Oatmeal & Pears with Cinnamon Stage 3;
4 Beech Nut Rice Cereals & Pears, Stage 3; and Beech Nut Sweet Potatoes Stage 3.

5 7. Defendant CORE-MARK HOLDING COMPANY, INC. (“CORE-MARK”), a
6 Delaware corporation with its principal place of business located at 395 Oyster Point Boulevard,
7 Suite 415, South San Francisco, California 94080, is a person in the course of doing business
8 within the meaning of Health and Safety Code § 25249.11. CORE-MARK manufactures,
9 and/or distributes fruit cocktail, packaged pears and packaged peaches in California that expose
10 individuals to lead, including but not limited to Best Yet Chunky Mixed Fruit in Pear Juice,
11 Best Yet Bartlett Pear Halves in Heavy Syrup; and Best Yet Yellow Cling Peach Halves in
12 Heavy Syrup

13 8. Defendant DEL MONTE FOODS (“DEL MONTE”), a Delaware corporation
14 with its principal place of business located at One Maritime Plaza, San Francisco, California
15 94111, is a person in the course of doing business within the meaning of Health and Safety
16 Code § 25249.11. DEL MONTE manufactures, and/or distributes fruit cocktail, packaged
17 pears, and packaged peaches in California that expose individuals to lead, including but not
18 limited to Del Monte 100% Juice Fruit Cocktail; Del Monte Chunky Mixed Fruit in 100% Juice;
19 Del Monte Diced Pears in Light Syrup; Del Monte Freestone Peach Slices in 100% Juice; Del
20 Monte Fruit Cocktail in Heavy Syrup; Del Monte Fruit Cocktail in Heavy Syrup (peach, pear,
21 grapes); Del Monte Fruit Cocktail No Sugar Added; Del Monte Lite Fruit Cocktail in Extra
22 Light Syrup; Del Monte Pear Halves in Heavy Syrup; Del Monte Pear Halves, Bartlett Pears in
23 100% Real Fruit Juice from Concentrate; Del Monte Sliced Yellow Cling Peaches in 100%
24 Juice; Del Monte Sliced Yellow Cling Peaches in Heavy Syrup; S&W Natural Style Fruit
25 Cocktail in Lightly Sweetened Juice; S&W Natural Style Pear Slices in Juice; S&W Natural
26 Style Yellow Cling Peach Slices in Lightly Sweetened Juice; S&W Premium Peach Halves
27 Yellow Cling Peaches in Light Syrup; S&W Sun Pears Premium and S&W Premium Sun Pears
28 in Light Syrup.

1 9. Defendant DOLE PACKAGED FROZEN FOODS, INC. (“DOLE”), a California
2 corporation with its principal place of business located at One Dole Drive, Westlake Village,
3 California 91362, is a person in the course of doing business within the meaning of Health and
4 Safety Code § 25249.11. DOLE manufactures, and/or distributes packaged peaches, fruit
5 cocktail and packaged pears in California that expose individuals to lead, including but not
6 limited to Dole Diced Peaches, Yellow Cling in Light Syrup; Dole Mixed Fruit in Light Syrup;
7 and Dole Pear Halves in Juice.

8 10. Defendant GERBER PRODUCTS COMPANY (“GERBER”), a Michigan
9 corporation with its principal place of business located at 12 Vreeland Road, Florham Park,
10 New Jersey 07932, is a person in the course of doing business within the meaning of Health and
11 Safety Code § 25249.11. GERBER manufactures, and/or distributes packaged carrots (for
12 babies and/or toddlers), packaged peaches (for babies and/or toddlers), packaged pears (for
13 babies and/or toddlers), and grape juice in California that expose individuals to lead, including
14 but not limited to Gerber 2nd Foods, Carrots; Gerber 3rd Foods, Peaches; Gerber 3rd Foods,
15 Pears; Gerber 3rd Foods, Sweet Potatoes; and Gerber 100% Juice, White Grape Juice.

16 11. Defendant GOLDEN STAR TRADING, INC. (“GOLDEN STAR”), a California
17 corporation with its principal place of business located at 2730 Crenshaw Boulevard, Suite M,
18 Torrance, California 90501, is a person in the course of doing business within the meaning of
19 Health and Safety Code § 25249.11. GOLDEN STAR manufactures, and/or distributes fruit
20 cocktail and packaged peaches in California that expose individuals to lead, including but not
21 limited to Golden Star Mixed Fruit in Light Syrup (Peach, Pineapple, Pears); and Golden Star
22 Peach Halves in Heavy Syrup.

23 12. Defendant THE HAIN CELESTIAL GROUP, INC. (“HAIN”), a Delaware
24 corporation with its principal place of business located at 58 South Service Road, Suite 250,
25 Melville, New York, 11747, is a person in the course of doing business within the meaning of
26 Health and Safety Code § 25249.11. HAIN manufactures, and/or distributes packaged sweet
27 potatoes (for babies and/or toddlers), packaged foods that include peaches (for babies and/or
28 toddlers), and grape juice in California that expose individuals to lead, including but not limited

1 to Earth's Best Organic Sweet Potatoes, Stage 2; Earth's Best Organic Peach Apricot Muesli,
2 Stage 3; and Walnut Acres Organic Concord Grape.

3 13. Defendant J.M. SMUCKER COMPANY ("SMUCKER'S"), an Ohio corporation
4 with its principal place of business located at 1 Strawberry Lane, Orrville, Ohio 44667, is a
5 person in the course of doing business within the meaning of Health and Safety Code §
6 25249.11. SMUCKER'S manufactures, and/or distributes grape juice in California that expose
7 individuals to lead, including but not limited to Santa Cruz Organic Concord Grape Juice; R.W.
8 Knudsen Just Concord Grape Juice; R.W. Knudsen Organic Just Concord Grape Juice.

9 14. Defendant KEDEM FOOD PRODUCTS INTERNATIONAL ("KEDEM"), a
10 New Jersey corporation with its principal place of business located at 63 Lefante Lane,
11 Bayonne, New Jersey 07002, is a person in the course of doing business within the meaning of
12 Health and Safety Code § 25249.11. KEDEM manufactures, and/or distributes grape juice in
13 California that expose individuals to lead, including but not limited to Kedem Concord Grape
14 Juice 100% Pure Grape Juice.

15 15. Defendant LANGER JUICE COMPANY, INC. ("LANGER"), a California
16 corporation with its principal place of business located at 16195 Stephens Street, City of
17 Industry, California 91745, is a person in the course of doing business within the meaning of
18 Health and Safety Code § 25249.11. LANGER manufactures, and/or distributes grape juice in
19 California that expose individuals to lead, including but not limited to Langers Grape Juice
20 (Concord); Langers Grape Juice Plus; and Langers Red Grape Juice.

21 16. Defendant SENECA FOODS CORPORATION ("SENECA"), a New York
22 corporation with its principal place of business located at 3736 South Main Street, Marion, New
23 York 14505, is a person in the course of doing business within the meaning of Health and
24 Safety Code § 25249.11. SENECA manufactures, and/or distributes packaged peaches and fruit
25 cocktail in California that expose individuals to lead, including but not limited to Libby's
26 Yellow Cling Peach Slices No Sugar Added (Sweetened with Splenda); and Libby's Fruit
27 Cocktail No Sugar Added (Sweetened with Splenda).

28 17. Defendant LUCERNE FOODS, INC. ("LUCERNE"), a Delaware corporation

1 with its principal place of business located at 5918 Stoneridge Mall Road, Pleasanton,
2 California 94588, is a person in the course of doing business within the meaning of Health and
3 Safety Code § 25249.11. LUCERNE manufactures, and/or distributes packaged carrots (for
4 babies and/or toddlers), packaged foods that include peaches (for babies and/or toddlers),
5 packaged pears (for babies and/or toddlers), packaged sweet potatoes (for babies and/or
6 toddlers), grape juice, fruit cocktail, packaged pears, and packaged peaches in California that
7 expose individuals to lead, including but not limited to O Organics for Baby, Organic Carrots,
8 Stage 2; O Organics for Baby, Organic Peach Rice Banana, Stage 2; O Organics for Baby,
9 Organic Pears, Stage 2; O Organics for Baby, Organic Sweet Potatoes, Stage 2; O Organics
10 Organic Grape Juice from Concentrate; Eating Right Fruit Cocktail, Packed in Sucralose; Eating
11 Right No Sugar Fruit Cocktail; Eating Right Fruit Cocktail No Sugar Added; Safeway 100%
12 Juice Grape Juice; Safeway Organic Grape Juice; Safeway Fruit Cocktail in Heavy Syrup;
13 Safeway Light Sugar Fruit Cocktail; Safeway Lite Fruit Cocktail in Pear Juice; Safeway Lite
14 Fruit Cocktail; Safeway Lite Bartlett Pear Halves in Pear Juice; Safeway Pear Halves in Light
15 Juice; and Safeway Yellow Cling Peach Slices in Pear Juice..

16 18. Defendant SAFEWAY, INC. (“SAFEWAY”), Delaware corporation with its
17 principal place of business located at 5918 Stoneridge Mall Road, Pleasanton, California 94588-
18 3299, is a person in the course of doing business within the meaning of Health and Safety Code
19 § 25249.11. SAFEWAY manufactures, and/or distributes packaged carrots (for babies and/or
20 toddlers), packaged foods that include peaches (for babies and/or toddlers), packaged pears (for
21 babies and/or toddlers), packaged sweet potatoes (for babies and/or toddlers), grape juice, fruit
22 cocktail, packaged pears, and packaged peaches in California that expose individuals to lead,
23 including but not limited to O Organic for Baby, Organic Carrots, Stage 2; O Organics for
24 Baby, Organic Peach Rice Banana, Stage 2; O Organics for Baby, Organic Pears, Stage 2; O
25 Organics for Baby, Organic Sweet Potatoes, Stage 2; O Organics Organic Grape Juice from
26 Concentrate; Eating Right Fruit Cocktail, Packed in Sucralose; Eating Right No Sugar Fruit
27 Cocktail; Eating Right Fruit Cocktail No Sugar Added; Safeway 100% Juice Grape Juice;
28 Safeway Organic Grape Juice; Safeway Fruit Cocktail in Heavy Syrup; Safeway Light Sugar

1 Fruit Cocktail; Safeway Lite Fruit Cocktail in Pear Juice; Safeway Lite Fruit Cocktail; Safeway
2 Lite Bartlett Pear Halves in Pear Juice; Safeway Pear Halves in Light Juice; and Safeway
3 Yellow Cling Peach Slices in Pear Juice.

4 19. Defendant TARGET CORPORATION (“TARGET”), a Minnesota corporation
5 with its principal place of business located at 1000 Nicollet Mall, TPS-2672, Minneapolis,
6 Minnesota 55403, is a person in the course of doing business within the meaning of Health and
7 Safety Code § 25249.11. TARGET manufactures, and/or distributes packaged peaches,
8 packaged pears and fruit cocktail in California that expose individuals to lead, including but not
9 limited to Market Pantry Diced Peaches in Light Syrup; Market Pantry Diced Pears in Light
10 Syrup; and Market Pantry Mixed Fruit in Light Syrup.

11 20. Defendant RALEY’S, a California corporation with its principal place of
12 business located at 500 West Capitol Avenue, West Sacramento, California 95605, is a person
13 in the course of doing business within the meaning of Health and Safety Code § 25249.11.
14 RALEY’S manufactures, and/or distributes grape juice, fruit cocktail and packaged peaches in
15 California that expose individuals to lead, including but not limited to Raley’s 100% Grape
16 Juice; Raley’s Fruit Cocktail in Heavy Syrup; and Raley’s Sliced Yellow Cling Peaches in
17 Heavy Syrup.

18 21. Defendant SAVE MART SUPERMARKETS (“SAVE MART”), a California
19 corporation with its principal place of business located at 1800 Standiford Avenue, Modesto,
20 California, is a person in the course of doing business within the meaning of Health and Safety
21 Code § 25249.11. SAVE MART manufactures, and/or distributes packaged pears, fruit
22 cocktail, grape juice, packaged peaches in California that expose individuals to lead, including
23 but not limited to Maxx Value Pear Pieces in Light Syrup; Maxx Value Fruit Mix in Light
24 Syrup (Peach, Pear, Grape).

25 22. Defendant SMART & FINAL, INC. (“SMART & FINAL”), a Delaware
26 corporation with its principal place of business located at 600 Citadel Drive, Commerce,
27 California 90040, is a person in the course of doing business within the meaning of Health and
28 Safety Code § 25249.11. Smart & Final manufactures, and/or distributes packaged pears, fruit

1 cocktail, packaged peaches, and grape juice in California that expose individuals to lead,
2 including but not limited to Chef’s Review Fruit Cocktail; First Street Diced Pears; First Street
3 Fruit Cocktail in heavy syrup; First Street Sliced Bartlett; First Street Yellow Cling Peaches in
4 heavy syrup; Simple Value Yellow Cling Peaches in light syrup; and First Street Grape Juice
5 from concentrate 100% juice

6 23. Defendant STATER BROS. MARKETS (“STATER BROS.”), a California
7 corporation with its principal place of business located at 301 South Tippecanoe Avenue, San
8 Bernardino, California 92408, is a person in the course of doing business within the meaning of
9 Health and Safety Code § 25249.11. STATER BROS. manufactures, and/or distributes grape
10 juice, fruit cocktail, and packaged peaches in California that expose individuals to lead,
11 including but not limited to Stater Bros. 100% Juice Grape Juice; Stater Bros. 100% Juice White
12 Grape Juice; Stater Bros. Fruit Cocktail in Heavy Syrup; Stater Bros. Yellow Cling Peach
13 Halves; and Stater Bros. Yellow Cling Sliced Peaches in Heavy Syrup.

14 24. Defendant THE KROGER CO. (“KROGER”), an Ohio corporation with its
15 principal place of business located at 1014 Vine Street, Cincinnati, Ohio 45202, is a person in
16 the course of doing business within the meaning of Health and Safety Code § 25249.11.
17 KROGER manufactures, and/or distributes grape juice and fruit cocktail in California that
18 expose individuals to lead, including but not limited to Kroger Fruit Cocktail in Heavy Syrup;
19 Kroger Grape Juice 100% Juice; Kroger Lite Fruit Cocktail in Pear Juice; and Kroger Value
20 Fruit Mix (Peaches, Pears, Grapes).

21 25. Defendant TOPCO ASSOCIATES, LLC (“TOPCO”), a Delaware corporation
22 with its principal place of business located at 7711 Gross Point Road, Skokie, Illinois 60077, is
23 a person in the course of doing business within the meaning of Health and Safety Code §
24 25249.11. TOPCO manufactures, and/or distributes packaged pears, grape juice, and packaged
25 peaches in California that expose individuals to lead, including but not limited to Full Circle
26 Organic Bartlett Pear Slices; Valu Time Grape Drink from Concentrate; Valu Time Irregular
27 Bartlett Pear Slices; and Valu Time Yellow Cling Peach Slices.

28 26. Defendant TRADER JOE’S COMPANY (“TRADER JOE’S”), a California

1 corporation with its principal place of business located at 800 S. Shamrock Avenue, Monrovia,
2 California 91016, is a person in the course of doing business within the meaning of Health and
3 Safety Code § 25249.11. TRADER JOE’S manufactures, and/or distributes grape juice,
4 packaged pears and packaged peaches in California that expose individuals to lead, including
5 but not limited to Trader Joe’s Concord Grape Juice Made From Fresh Pressed Organic
6 Concord Grapes; Trader Joe’s Pear Halves in White Grape Juice; and Trader Joe’s Yellow
7 Cling Peach Halves in White Grape Juice.

8 27. Defendant TREE TOP, INC. (“TREE TOP”), which will do business in
9 California as CALIFORNIA TREE TOP, INC., a Washington corporation with its principal
10 place of business located at 220 East 2nd Avenue, Selah, Washington 98942, is a person in the
11 course of doing business within the meaning of Health and Safety Code § 25249.11. TREE
12 TOP manufactures, and/or distributes grape juice in California that expose individuals to lead,
13 including but not limited to Tree Top 100% Juice, Grape.

14 28. Defendant TRUITT BROS., INC. (“TRUITT BROS.”), an Oregon corporation
15 with its principal place of business located at 1105 Front Street, NE, Salem, Oregon 97301, is a
16 person in the course of doing business within the meaning of Health and Safety Code §
17 25249.11. TRUITT BROS. manufactures, and/or distributes packaged pears in California that
18 expose individuals to lead, including but not limited to Truitt Brothers Pacific NorthWest
19 Bartlett Pear Halves in Pear Juice From Concentrate.

20 29. Defendant WALGREEN COMPANY (“WALGREENS”), an Illinois corporation
21 with its principal place of business located at 300 Wilmot Road, MS #3301, Deerfield, Illinois
22 60015, is a person in the course of doing business within the meaning of Health and Safety
23 Code § 25249.11. WALGREENS manufactures, and/or distributes grape juice in California that
24 expose individuals to lead, including but not limited to Walgreens Grape Juice from
25 Concentrate 100% Juice.

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28 30. Defendant WAL-MART STORES, INC. (“WAL-MART”), a Delaware

1 corporation with its principal place of business located at 702 SW 8th Street, Dept. 8687, M.S.
2 #0555, Bentonville, Arkansas 72716, is a person in the course of doing business within the
3 meaning of Health and Safety Code § 25249.11. WAL-MART manufactures, and/or distributes
4 grape juice, packaged pears, fruit cocktail and packaged peaches in California that expose
5 individuals to lead, including but not limited to Great Value 100% Grape Juice; Great Value
6 Bartlett Pear Halves in 100% Juice; Great Value Pear Halves in 100% Juice; Great Value
7 Bartlett Sliced Pears in Heavy Syrup; Great Value No Sugar Added Fruit Cocktail; and Great
8 Value Yellow Cling Sliced Peaches.

9 31. Defendant CVS PHARMACY, INC. (“CVS”), a Rhode Island corporation with
10 its principal place of business located at One CVS Drive, Woonsocket, Rhode Island 02895, is a
11 person in the course of doing business within the meaning of Health and Safety Code §
12 25249.11. CVS manufactures, and/or distributes grape juice, packaged peaches and packaged
13 pears in California that expose individuals to lead, including but not limited to Walnut Grove
14 Market Grape Juice; Walnut Grove Market Natural Peaches Sliced Yellow Cling in Light
15 Syrup; and Walnut Grove Market Natural Pear Halves in Heavy Syrup.

16 32. Defendant WELCH’S FOODS, INC., A COOPERATIVE (“WELCH’S”), a
17 Michigan corporation with its principal place of business located at 3 Concord Farms, 575
18 Virginia Road, Concord, Massachusetts 01742, is a person in the course of doing business
19 within the meaning of Health and Safety Code § 25249.11. WELCH’S manufactures, and/or
20 distributes grape juice in California that expose individuals to lead, including but not limited to
21 Welch’s 100% Grape Juice (from Welch’s Concord Grapes); and Welch’s 100% Red Grape
22 Juice from Concentrate.

23 33. Defendant WHOLE FOODS MARKET, INC. (“WHOLE FOODS”), a Texas
24 corporation with its principal place of business located at 500 Bowie Street, Austin, Texas
25 78703, is a person in the course of doing business within the meaning of Health and Safety
26 Code § 25249.11. WHOLE FOODS manufactures, and/or distributes grape juice in California
27 that expose individuals to lead, including but not limited to 365 Everyday Value Organic 100%
28 Juice Concord Grapes.

1 34. Defendants DOES 1 through 100 are persons in the course of doing business
2 within the meaning of Health and Safety Code § 25249.11. DOES 1 through 200 manufacture
3 and/or distribute one or more of the following in California that expose individuals to lead:
4 grape juice, packaged peaches, packaged pears, fruit cocktail, packaged carrots (for babies
5 and/or toddlers), packaged pears (for babies and/or toddlers), packaged foods that include pears
6 (for babies and/or toddlers), packaged peaches (for babies and/or toddlers), packaged foods that
7 include peaches (for babies and/or toddlers), packaged sweet potatoes (for babies and/or
8 toddlers). Plaintiff is presently unaware of their true names and capacities and, therefore,
9 Plaintiff sues Defendant DOES 1 through 200 by such fictitious names, pursuant to California
10 Code of Civil Procedure § 474. Plaintiff will amend this Complaint and include these Doe
11 Defendants' true names and capacities when they are ascertained.

12 35. BEECH-NUT, CORE-MARK, DEL MONTE, DOLE, GERBER, GOLDEN
13 STAR, HAIN, SMUCKER'S, KEDEM, LANGER, SENECA, LUCERNE, SAFEWAY,
14 TARGET, RALEY'S, SAVE MART, SMART & FINAL, STATER BROS., KROGER,
15 TOPCO, TRADER JOE'S, TREE TOP, TRUITT BROS., WALGREENS, WAL-MART, CVS,
16 WELCH'S, WHOLE FOODS, and DOES 1-200 are collectively referred to herein as
17 "Defendants."

18 36. Each of the Defendants herein has employed ten (10) or more persons at all times
19 relevant to this action.

20 **JURISDICTION AND VENUE**

21 37. The Court has jurisdiction over this action pursuant to § 25249.7, which allows
22 enforcement in any court of competent jurisdiction, and pursuant to California Constitution
23 Article VI, Section 10, because this case is a cause not given by statute to other trial courts.

24 38. This Court has jurisdiction over Defendants named herein because Defendants
25 either are located in this State or are foreign corporations authorized to do business in California
26 and registered with the California Secretary of State; or who do sufficient business in California,
27 have sufficient minimum contacts with California, or otherwise intentionally avail themselves
28 of the markets within California through the manufacturing, distribution, sale, promotion, and/or

1 marketing of their products in California to render the exercise of jurisdiction by the California
2 courts permissible under traditional notions of fair play and substantial justice.

3 39. Venue is proper in the County of Alameda because one or more of the violations
4 arise in Alameda County.

5 40. ELF is a non-profit organization acting as a private attorney general, as
6 authorized by Health & Safety Code § 25249.7. In this capacity, ELF has not suffered an injury
7 within the meaning of Article III of the United States Constitution.

8 41. On June 9, 2010; June 23, 2010; August 5, 2010; and August 24, 2010; ELF
9 served 60-Day Notices of Proposition 65 violations to the requisite public enforcement agencies
10 and to Defendants. These notices were issued pursuant to, and in compliance with, the
11 requirements of § 25249.7(d) and the statute's implementing regulations regarding the notice of
12 the violations to be given to certain public enforcement agencies and to the violator. The
13 notices given included, *inter alia*, the following information: the name, address, and telephone
14 number of the noticing individual; the name of the alleged violator; the statute violated; the
15 approximate time period during which violations occurred; and descriptions of the violations,
16 including the chemical involved, the routes of toxic exposure, and the specific products and type
17 of products causing the violations. The named Defendants and the California Attorney General
18 were provided copies of the 60-Day Notice by mail. Additionally, the named Defendants were
19 each provided with a copy of a document entitled "The Safe Drinking Water and Toxic
20 Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A
21 to Title 27 of CCR § 25903.

22 42. Each 60-Day Notice of Violation included a certificate of merit executed by
23 Plaintiffs' attorneys stating that the person executing the certificate had consulted with one or
24 more persons with relevant and appropriate experience or expertise who has reviewed the facts,
25 studies or other data regarding exposure to the listed chemical that is the subject of the notice,
26 and that, based on that information, the person executing the certificate believes there is a
27 reasonable and meritorious case for this private action. Factual information sufficient to
28 establish the basis of the certificate of merit was attached to the certificate of merit served on the

1 California Attorney General.

2 43. None of these public prosecutors has commenced and is diligently prosecuting an
3 action against the violations at issue herein, although the notice period provided in § 25249.7
4 has elapsed.

5 **STATUTORY AND REGULATORY BACKGROUND**

6 44. Proposition 65 was passed by voter initiative in 1986, in which the People of
7 California declared their right to be “informed about exposures to chemicals that cause cancer,
8 birth defects, or other reproductive harm.” Proposition 65, § 1(b).

9 45. Under Proposition 65:

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

13 Health and Safety Code § 25249.6

14 46. Under Proposition 65, an exposure is “knowing” where the party responsible for
15 such exposure has:

16 “knowledge of the fact that a discharge of, release of, or exposure
17 to a chemical listed pursuant to Section 25249.8(a) of the Act is
18 occurring. No knowledge that the discharge, release or exposure is
unlawful is required.”

19 27 CCR § 25102(n). This knowledge may be actual or constructive. *See, e.g.*, Final Statement
20 of Reasons Revised (November 4, 1988) for former 22 CCR § 12201.

21 47. An exposure to a chemical in a consumer product is one “which results from a
22 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
23 consumer good, or any exposure that results from receiving a consumer service.” 27 CCR §
24 25601(b).

25 48. Proposition 65 establishes a procedure by which the Governor lists chemicals
26 known to the state to cause reproductive toxicity and/or cancer. *See* § 25249.8.

27 49. On February 27, 1987, California Governor George Deukmejian declared lead a
28 reproductive toxin subject to Proposition 65. Proposition 65 requires that consumers must be

1 warned before they are exposed to chemicals, including metals, that cause birth defects and/or
2 reproductive harm. Lead became subject to the warning requirement one year later on February
3 27, 1988. (27 California Code of Regulations (“CCR”) § 25000, *et seq.*; Health and Safety
4 Code § 25249.10(b).)

5 50. Lead is specifically identified as a reproductive toxicant under three
6 subcategories: “developmental reproductive toxicity,” which means harm to the developing
7 fetus; “female reproductive toxicity,” which means harm to the female reproductive system; and
8 “male reproductive toxicity,” which means harm to the male reproductive system. 27 CCR §
9 27001(c).

10 51. On October 1, 1992, California Governor Pete Wilson declared “lead and lead
11 compounds” a carcinogen subject to Proposition 65. Lead and lead compounds became subject
12 to the warning requirement one year later on October 1, 1993 (27 CCR § 25000, *et seq.*; Health
13 and Safety Code § 25249.10(b).)

14 **FACTS**

15 52. Defendants manufacture and/or distribute a variety of FOODS AND
16 BEVERAGES labeled, marketed and intended for immediate human consumption (without
17 being made a constituent or ingredient of another product, nor requiring substantial additional
18 preparation), including, but not limited to, those listed in paragraphs 6-33, *supra*. These foods
19 and beverages are manufactured, distributed and/or sold in California for the purpose of
20 distribution, retail sale and consumption in California.

21 53. Scientists agree that there is no safe level of exposure to lead. The American
22 Academy of Pediatrics has stated that there is no “safe level” of lead for children.
23 (www.aap.org/advocacy/washing/News-Release_Press-Statements/01-05-08-EPA-Lead.pdf.)

24 54. In fact, acceptable lead exposure limits have been repeatedly lowered over the
25 years and current scientific understanding suggests that neurological damage can occur at blood
26 lead levels much lower than previously believed. There is widespread consensus among
27 scientists and public health agencies that there is no safe level of lead in the body and, in
28 addition, children and fetuses are at greatest risk of harmful effects from exposure to lead.

1 *Toxicological Profile for Lead*, U.S. Department Of Health And Human Services, Public Health
2 Service, Agency for Toxic Substances and Disease Registry at 10 (“No safe blood lead level in
3 children has been determined.”); 24; 25 (“Most importantly, no threshold for the effects of lead
4 on IQ has been identified.”); 222 (“Children and developing organisms in general, are more
5 susceptible to lead toxicity than adults.”); 364 (2007).

6 55. In a published statement regarding lead levels in the blood of children, the
7 Centers for Disease Control and Prevention (“CDC”) states that “there is no evidence of a
8 threshold below which adverse effects are not experienced.” (Centers for Disease Control and
9 Prevention, “Why not change the blood lead level of concern at this time?” (June 1, 2009),
10 www.cdc.gov/nceh/lead/policy/changeBLL.htm.) Unfortunately, children absorb lead into their
11 bodies at higher rates than adults. (*Toxicological Profile for Lead*, U.S. Department Of Health
12 And Human Services, Public Health Service, Agency for Toxic Substances and Disease
13 Registry, at 7 & 158 (2007).) Furthermore, lead adversely affects the brain and central nervous
14 system, which are still forming in children and fetuses.

15 56. Exposure to small amounts of lead can be harmful. The body stores lead in
16 bones, and small amounts of lead can build up in the body and cause lifelong learning and
17 behavior problems. In particular, small amounts of lead in the body can make it difficult for
18 children to learn, pay attention and succeed in school. (California Department of Health,
19 Childhood Lead Poisoning Prevention Branch, [www.cdph.ca.gov/programs/CLPPB/Pages/
20 FAQ-CLPPB.aspx](http://www.cdph.ca.gov/programs/CLPPB/Pages/FAQ-CLPPB.aspx).)

21 57. Furthermore, lead is released from a mother’s bones during pregnancy, enters the
22 bloodstream, and crosses the placenta, resulting in harmful effects on the fetus. (*Toxicological
23 Profile for Lead*, U.S. Department Of Health And Human Services, Public Health Service,
24 Agency for Toxic Substances and Disease Registry at 10 222 & 364 (2007).)

25 58. Infants are born with a lead body burden that reflects the burden of the mother.
26 During gestation, lead from the maternal skeleton is transferred across the placenta to the fetus.
27 Moreover, there is transfer of maternal blood lead load across the placenta to a developing fetus.
28 Additional lead exposure may occur during breast feeding. This means that maternal ongoing

1 exposure to lead during pregnancy, as well as lead stored in the mother's body from exposure
2 prior to conception, can result in exposure to the fetus or nursing neonate. *Id.* at 118, 223, 137
3 & 172 (internal citations omitted).

4 59. Exposures to lead are cumulative, which means they can add up over time from
5 repeated exposures to the same product that has low but detectable lead levels, to other products
6 that have lead, and from other food groups that have lead. Thus, preventable exposures to lead
7 should be avoided.

8 60. The FOODS AND BEVERAGES at issue in this Complaint contain lead which
9 results in exposure to the lead upon consumption of the FOODS AND BEVERAGES.

10 61. Plaintiff is informed and believes and thereon alleges that the Defendants knew
11 and intended that the foreseeable use of their FOODS AND BEVERAGES results in exposure
12 to lead, and that the levels of lead exceed the lead exposure levels which trigger warning
13 requirements under Proposition 65.

14 62. Defendants know and intend that individuals will consume their FOODS AND
15 BEVERAGES, thus exposing them to lead.

16 63. Nevertheless, and in violation of § 25249.6 *et seq.*, Defendants have not provided
17 clear and reasonable warnings to inform the public that their FOODS AND BEVERAGES
18 expose consumers to lead, a chemical known to the State of California to cause cancer and
19 reproductive toxicity.

20 64. Defendants have, in the course of doing business, knowingly and intentionally
21 exposed individuals to a chemical known to the State of California to cause cancer and
22 reproductive toxicity without first providing a clear and reasonable warning as required by §
23 25249.6 and § 25249.11(f). As a direct result of Defendants' acts and omissions, the general
24 public in California is being regularly, unlawfully, and involuntarily exposed to lead, a known
25 reproductive toxin and carcinogen.

26 65. The FOODS AND BEVERAGES continue to be offered for sale in California
27 without a clear and reasonable warning.
28

1 **FIRST CAUSE OF ACTION**

2 **(Violations of California Health and Safety Code § 25249.6 *et seq.*)**
3 **(Against All Defendants)**

4 66. Plaintiff incorporates by reference ¶¶ 1 through 65 as if fully set forth herein.

5 67. The People of the State of California have declared in Proposition 65 their right
6 “[t]o be informed about exposures to chemicals that cause cancer, birth defects and other
7 reproductive harm.” Proposition 65, Section 1(b) of the Initiative Measure.

8 68. To carry out those statutory purposes, Proposition 65 requires that a clear and
9 reasonable warning be given by persons who, in the course of doing business, knowingly and
10 intentionally expose any individual to a chemical known to the State of California to cause
11 cancer and reproductive harm.

12 69. Proposition 65 provides that any person “violating or threatening to violate” the
13 statute may be enjoined in any court of competent jurisdiction. § 25249.7. “Threaten to
14 violate” is defined to mean “to create a condition in which there is a substantial probability that
15 a violation will occur.” § 25249.11(e).

16 70. Violators of Proposition 65 are liable for civil penalties of up to \$2500.00 per
17 day per violation, recoverable in a civil action. § 25249.7(b).

18 71. Defendants have engaged and continue to engage in conduct which violates §
19 25249.6. This conduct includes the manufacturing and/or distributing of FOODS AND
20 BEVERAGES the foreseeable use of which results in exposing the public to lead, known to the
21 State of California to cause reproductive toxicity and cancer, without first providing a clear and
22 reasonable warning pursuant to §§ 25249.6 and 25249.11(f). Defendants have, therefore, in the
23 course of doing business, knowingly and intentionally exposed individuals to a chemical known
24 to the State of California to cause reproductive toxicity and cancer without first providing a
25 clear and reasonable warning.

26 72. Some unknown number of the FOODS and BEVERAGES sold by Defendants
27 and their agents since the Notice of Violation was sent to Defendants remain unopened and
28 uneaten and have not yet exposed a person to lead but will when consumed. Such FOODS and

1 BEVERAGES require a “clear and reasonable warning” prior to exposure.

2 73. By the above-described acts, Defendants are liable, pursuant to § 25249.7(b), for
3 a civil penalty of up to \$2500 per day per individual exposure to lead through Defendants’
4 FOODS AND BEVERAGES.

5 74. An action for injunctive relief under Proposition 65 is specifically authorized by
6 § 25249.7(a).

7 75. Continuing commission by Defendants of the acts alleged above will irreparably
8 harm the citizens of the State of California, for which harm they have no plain, speedy, or
9 adequate remedy at law.

10 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

11 **THE NEED FOR INJUNCTIVE RELIEF**

12 76. By committing the acts alleged herein, the Defendants have caused irreparable
13 harm for which there is no plain, speedy or adequate remedy at law. In the absence of equitable
14 relief, the general public will continue to be involuntarily exposed to the lead contained in
15 Defendants’ FOODS AND BEVERAGES, creating a substantial risk of irreparable injury by
16 continuing to cause consumers to be exposed to lead through the ingestion of the FOODS AND
17 BEVERAGES.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for the following relief:

20 A. a preliminary and permanent injunction, pursuant to § 25249.7(b), enjoining
21 Defendants, their agents, employees, assigns and all persons acting in concert or
22 participating with Defendants from importing, manufacturing and/or distributing FOODS
23 AND BEVERAGES that contain lead in California without first providing a clear and
24 reasonable warning that the consumers of the FOODS AND BEVERAGES are exposed,
25 within the meaning of Proposition 65, to lead;

26 B. an assessment of civil penalties, pursuant to § 25249.7(b), against each
27 Defendant in the amount of \$2500 per day for each violation of Proposition 65;

28

1 C. that Defendants provide a warning to each person that the FOODS AND
2 BEVERAGES have exposed, or upon consumption will expose, that person to chemicals
3 known to cause cancer and reproductive harm;

4 D. that the Court, pursuant to § 25249.7(a), order Defendants to take any other
5 action this Court may deem necessary and proper;

6 E. an award to Plaintiff of its reasonable attorneys' fees and costs of suit pursuant to
7 California Code of Civil Procedure § 1021.5 as Plaintiff shall specify in further
8 application to the Court; and,

9 F. such other and further relief as may be just and proper.

10
11
12 DATED: September 28, 2011



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