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ENVIRONMENTAL HEALTH ADVOCATES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH ADVOCATES, INC.,

Plaintiff,

v.

BOUCHARD CHOCOLATE, a Belgian corporation, CHOCZERO, INC., a California corporation, EATING EVOLVED INC., a New York corporation, THE CHOCOLATE BUTCHER, LLC, a Vermont corporation, AMAZON.COM, INC., a Delaware corporation, and DOES 1 through 100, inclusive,

Defendants.

Case No.:

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.6 et seq.)

FILED BY FAX
ALAMEDA COUNTY
January 27, 2021
CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy
CASE NUMBER:
RG21086815

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I.
INTRODUCTION

1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff seeks to remedy Defendants’ failure to inform the People of exposure to lead, a known carcinogen. Defendants expose consumers to lead by manufacturing, importing, selling, and/or distributing Bouchard Probiotic Chocolate, ChocZero 70% Dark Chocolate Squares, ChocZero Sugar Free Almond Keto Bark, Evolved Signature 72% Cacao, and The Butcher Chop Shop Extra Dark Chocolate (“Products”). Defendants know and intend that customers will ingest Products containing lead.

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

3. California identified and listed lead as a chemical known to cause developmental/reproductive toxicity as early as February 27, 1987, and as a chemical known to cause cancer on October 1, 1992.

4. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to lead in connection with Defendants’ manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers in California before exposing them to lead in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65 along with attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

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II.
PARTIES

6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a corporation in the State of California dedicated to protecting the health of California citizens through

1 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
2 interest pursuant to Health and Safety Code, section 25249.7.

3 7. Defendant BOUCHARD CHOCOLATE (“Bouchard”) is a corporation organized and
4 existing under the laws of Belgium. Bouchard is registered to do business in California, and does
5 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
6 Bouchard manufactures, imports, sells, or distributes the Products in California and Alameda County.

7 8. Defendant CHOCZERO, INC. (“ChocZero”) is a corporation organized and existing
8 under the laws of California. ChocZero is registered to do business in California, and does business in
9 the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. ChocZero
10 manufactures, imports, sells, or distributes the Products in California and Alameda County.

11 9. Defendant EATING EVOLVED INC. (“Evolved”) is a corporation organized and
12 existing under the laws of New York. Evolved is registered to do business in California, and does
13 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
14 Evolved manufactures, imports, sells, or distributes the Products in California and Alameda County.

15 10. Defendant AMAZON.COM, INC. (“Amazon”) is a corporation organized and existing
16 under the laws of Delaware. Amazon is registered to do business in California, and does business in the
17 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Amazon
18 manufactures, imports, sells, or distributes the Products in California and Alameda County.

19 11. Defendant THE CHOCOLATE BUTCHER, LLC (“The Chocolate Butcher”) is a
20 corporation organized and existing under the laws of Vermont. The Chocolate Butcher is registered to
21 do business in California, and does business in the County of Alameda, within the meaning of Health
22 and Safety Code, section 25249.11. The Chocolate Butcher manufactures, imports, sells, or distributes
23 the Products in California and Alameda County.

24 12. Plaintiff does not know the true names and/or capacities, whether individual, partners,
25 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
26 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
27 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and
28 thereon alleges that these defendants are responsible in whole or in part for Plaintiff’s alleged damages.

III.
VENUE AND JURISDICTION

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3 13. California Constitution Article VI, Section 10 grants the Superior Court original
4 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
5 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
6 has jurisdiction.

7 14. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
8 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
9 County. Defendants conducted and continues to conduct business in this County as it relates to Products.

10 15. Defendants have sufficient minimum contacts in the State of California or otherwise
11 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be
12 consistent with traditional notions of fair play and substantial justice.

IV.
CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Violation of Proposition 65 – Against all Defendants)

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16 16. Plaintiff incorporates by reference each and every allegation contained above.

17 17. Proposition 65 mandates that citizens be informed about exposures to chemicals that
18 cause cancer, birth defects, and other reproductive harm.

19 18. Defendants manufactured, imported, sold, and/or distributed Products containing lead
20 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
21 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
22 future.

23 19. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
24 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
25 to lead through reasonably foreseeable use of the Products.

26 20. Products expose individuals to lead through direct ingestion. This exposure is a natural
27 and foreseeable consequence of Defendants placing Products into the stream of commerce. As such,
28 Defendants intend that consumers will ingest Products, exposing them to lead.

1 21. Defendants knew or should have known that the Products contained lead and exposed
2 individuals to lead in the ways provided above. The Notice informed Defendants of the presence of lead
3 in the Products. Likewise, media coverage concerning lead and related chemicals in consumer products
4 provided constructive notice to Defendants.

5 22. Defendants' action in this regard were deliberate and not accidental.

6 23. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
7 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
8 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
9 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
10 California of the health hazards associated with exposures to lead contained in the Products.

11 24. The appropriate public enforcement agencies provided with the Notice failed to
12 commence and diligently prosecute a cause of action against Defendants.

13 25. Individuals exposed to lead contained in Products through direct ingestion resulting
14 from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm.
15 There is no other plain, speedy, or adequate remedy at law.

16 26. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
17 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
18 appropriate pursuant to Health and Safety Code, section 25249.7(a).

19 *(Rest of page intentionally left blank.)*

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

3 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
4 damages total a minimum of \$1,000,000;

5 2. A preliminary and permanent injunction against Defendants from manufacturing,
6 importing, selling, and/or distributing Products in California without providing a clear and reasonable
7 warning as required by Proposition 65 and related Regulations;

8 3. Reasonable attorney’s fees and costs of suit; and

9 4. Such other and further relief as may be just and proper.

10 Respectfully submitted:

11 Dated: January 26, 2021

GLICK LAW GROUP, PC

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15 By:



16 Noam Glick

17 **NICHOLAS & TOMASEVIC, LLP**

18 Craig M. Nicholas
19 Jake W. Schulte

20 Attorneys for Plaintiff
21 Environmental Health Advocates, Inc.
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