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9 ECOLOGICAL ALLIANCE, LLC

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 UNLIMITED CIVIL JURISDICTION

13 ECOLOGICAL ALLIANCE, LLC, a  
14 California limited liability company,

15 Plaintiffs,

16 vs.

17 LA TORTILLA FACTORY, INC., a  
18 Delaware corporation; and DOES 1 through  
19 10, inclusive,

20 Defendants.

CASE NO.: 22STCV07139

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

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

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**NATURE OF THE ACTION**

1. This Amended Complaint is brought by plaintiff ECOLOGICAL ALLIANCE, LLC (“Plaintiff”) in the public interest of the People of the State of California to enforce their right to be informed of the presence of chemicals listed by the State of California, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), including Lead.

2. Plaintiffs seek to remedy Defendants’ failure to warn citizens of the State of California, in violation of Proposition 65, about the presence of Lead (“Listed Chemical”) in the Defendant LA Tortilla Factory Inc’s (“Defendant”) LA Tortilla Factory Power Green wraps, and gluten free tortillas, including but not limited to LA Tortilla Factory Premium Cassava Tortillas, LA Tortilla Factory Gluten Free Wraps and Cauliflower Tortillas with Cassava Flour, offered for sale throughout the State of California (“Products”).

3. Defendant’s Products contain the Listed Chemical and consumers of Products in the State of California are exposed to the Listed Chemical through dermal exposure and ingestion of Products.

4. Defendants know and intend that their Products expose consumers in the State of California to the Listed Chemical.

5. Attached hereto and incorporated by reference are copies of letters (“60-Day Notices”), dated June 3, 2021, which Plaintiff sent to Defendant, Gelson’s Markets, and California’s Attorney General and dated March 25, 2021, which Plaintiff sent to Defendant, Winco Foods, LLC and California’s Attorney General. Identical letters were sent to every District Attorney in the state, to the City Attorneys of every California city with a population greater than 750,000, and to all Defendants. Attached to the 60-Day Notices were Certificates of Merit attesting to the reasonable and meritorious basis for this action, Certificates of Service attesting to service of the letters on each entity described above, and a description of Proposition 65 prepared by the California Office of Environmental Health Hazard Assessment.

1 Furthermore, factual information sufficient to establish the basis of the Certificates of Merit was  
2 enclosed with the 60-Day Notices sent to California's Attorney General.

3 6. After receiving the claims asserted in the 60-Day Notices, the public enforcement  
4 agencies identified in Paragraph 5 have failed to commence and diligently prosecute a cause of  
5 action against Defendants under Proposition 65.

6 7. Plaintiff seeks preliminary and permanent injunctive relief to compel Defendants  
7 to provide the warning required under Proposition 65 regarding the Products.

8 8. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil  
9 penalties against Defendants for violations of Proposition 65.

### 10 **PARTIES**

11 9. Plaintiff is a California limited liability company. It brings this action in the  
12 public interest pursuant to Health and Safety Code section 25249.7(d).

13 10. The Defendant is a "Person" in the course of doing business within the meaning  
14 of Health and Safety Code section 25249.11(a) – "Person" means an individual, trust, firm, joint  
15 stock company, corporation, company, partnership, limited liability company, and association."

16 11. The Defendant is a Delaware corporation that manufactures, distributes, and/or  
17 offers for sale in the State of California, Products that contain the Listed Chemical.

18 12. Defendants DOES 1-10, which manufacture, distribute, and/or offers for sale in  
19 the State of California Products that contain the Listed Chemical, are each persons in the course  
20 of doing business within the meaning of Health and Safety Code section 25249.11. At this  
21 time, the true names and capacities of defendants DOES 1 through 10, inclusive, are unknown  
22 to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of  
23 Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that  
24 each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
25 herein. When ascertained, their true names and capacities shall be reflected in an amended  
26 complaint.

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**VENUE AND JURISDICTION**

13. The Court has jurisdiction over this action pursuant to Health and Safety Code section 25249.7. Pursuant to California Constitution Article VI, section 10, the California Superior Court has “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other trial courts that should have jurisdiction.

14. The Court has jurisdiction over Defendants based on Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation, or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. Defendants’ purposeful availment renders the exercise of personal jurisdiction by the Court consistent with traditional notions of fair play and substantial justice.

15. Venue is proper in this Court because Defendants manufacture, distribute, offer for sale, sell, and/or serve Products that contain the Listed Chemical. Liability for Plaintiff’s causes of action, or some parts thereof, has accordingly arisen during the times relevant to this Complaint and Plaintiff accordingly seeks civil penalties and forfeitures imposed by statutes.

**FIRST CAUSE OF ACTION**

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

16. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 15, inclusive.

17. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-described acts, Defendants are liable for a violation of Proposition 65.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, offering for sale, selling, and/or serving in the State of California Products that contain the Listed Chemical

1 without first providing a “clear and reasonable warning” under Proposition 65;

2 2. That the Court grant Plaintiff’s reasonable attorneys’ fees and costs of suit;

3 3. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
4 civil penalties against Defendants in such amount as the Court deems appropriate; and

5 4. That the Court grant such other and further relief as may be just and proper.  
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8 Dated: March 10, 2022

Respectfully Submitted,  
CUSTODIO & DUBEY LLP

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11 By: 

12 Vineet Dubey  
13 Custodio & Dubey LLP  
14 Attorneys for Plaintiff  
15 ECOLOGICAL ALLIANCE, LLC  
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