

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENTORNO LAW, LLP
Noam Glick (SBN 251582)
Jake W. Schulte (SBN 293777)
Craig M. Nicholas (SBN 178444)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 629-0527
Fax: (619) 393-0154
Email: noam@enteronolaw.com
Email: jake@entornolaw.com
Email: craig@cntornolaw.com

Attorneys for Plaintiff
ENVIRONMENTAL HEALTH ADVOCATES, INC.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

PANOS BRANDS, LLC, a New Jersey limited
liability company; 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
September 01, 2021
CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy
CASE NUMBER:
RG21111988

I.

INTRODUCTION

1
2
3 1. This Complaint is a representative action brought by Environmental Health Advocates,
4 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
5 seeks to remedy Defendants’ failure to inform the People of exposure to Lead, a known carcinogen and
6 Cadmium, a known carcinogen. Defendants exposed consumers to lead by manufacturing, importing,
7 selling, and/or distributing Chatfield’s Unsweetened Cocoa Powder (“Products”). Defendants know and
8 intend that customers will ingest Products containing lead and cadmium.

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

14 3. California identified and listed lead as a chemical known to cause cancer as early as
15 October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February
16 27, 1987.

17 4. California identified and listed cadmium as a chemical known to cause cancer as early
18 as October 1, 1987, and as a chemical known to cause developmental/reproductive toxicity on May 1,
19 1997.

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

23 6. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
24 in California before exposing them to lead and cadmium in Products. (Health & Safety Code, §
25 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for their violations of Proposition
26 65 along with attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

PARTIES

7. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a corporation in the State of California dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposure from consumer products. It brings this action in the public interest pursuant to Health and Safety Code, section 25249.7.

8. Defendant PANOS BRANDS, LLC (“Panos”) is a limited liability company organized and existing under the laws of New Jersey. Panos is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Panos manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

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

III.

VENUE AND JURISDICTION

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

///

1 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
2 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
3 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

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

7 **IV.**

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 – Against all Defendants)**

11 13. Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

21 17. Products expose individuals to lead through direct ingestion. This exposure is a natural
22 and foreseeable consequence of Defendants placing Products into the stream of commerce. As such,
23 Defendants intend that consumers will ingest Products, exposing them to lead and cadmium.

24 18. Defendants knew or should have known that the Products contained lead and cadmium
25 and exposed individuals to lead and cadmium in the ways provided above. The Notice informed
26 Defendants of the presence of lead and cadmium in the Products. Likewise, media coverage concerning
27 lead, cadmium, and related chemicals in consumer products provided constructive notice to Defendants.

28 19. Defendants' action in this regard were deliberate and not accidental.

1 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
2 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
3 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
4 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
5 California of the health hazards associated with exposures to lead and cadmium contained in the
6 Products.

7 21. The appropriate public enforcement agencies provided with the Notice failed to
8 commence and diligently prosecute a cause of action against Defendants.

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

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

15 *[Rest of page intentionally left blank]*
16
17
18
19
20
21
22
23
24
25
26
27
28

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 on \$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: September 1, 2021

ENTORNO LAW, LLP

12
13 By:



Noam Glick

Jake W. Schulte

Craig M. Nicholas

14
15
16 Attorneys for Plaintiff Environmental
17 Health Advocates, Inc.
18
19
20
21
22
23
24
25
26
27
28