ELECTRONICALLY FILED Superior Court of California, 1 ENTORNO LAW, LLP County of Alameda Noam Glick (SBN 251582) 01/18/2022 at 01:48:18 PM Jake W. Schulte (SBN 293777) 2 Craig M. Nicholas (SBN 178444) By: Suzanne Pesko, Deputy Clerk 3 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 Email: noam@entornolaw.com 5 Email: jake@entornolaw.com Email: craig@entornolaw.com 6 Attorneys for Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. 7 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 IN AND FOR THE COUNTY OF ALAMEDA 10 ENVIRONMENTAL HEALTH ADVOCATES, Case No.: 22CV005770 INC., COMPLAINT FOR CIVIL PENALTIES 11 Plaintiff, AND INJUNCTIVE RELIEF 12 v. (Health & Safety Code § 25249.6 et seq.) 13 DESIGNER PROTEIN, LLC, a Delaware limited liability company, ATHENA 14 WELLNESS BRANDS, LLC, a Delaware limited liability company, AMAZON.COM, 15 INC., a Delaware corporation, and DOES 1 through 100, inclusive, 16 Defendants. 17 18 19 20 21 22 23 24 25 26 27 28

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 Designer Protein Plant Vegan Meal Replacement Protein Powder ("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 cancer as early as October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February 27, 1987.
- 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).)

II. <u>PARTIES</u>

6. 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.

- 7. Defendant DESIGNER PROTEIN, LLC ("DPL") is a limited liability company organized and existing under the laws of Delaware. DPL 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. DPL manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 8. Defendant ATHENA WELLNESS BRANDS, LLC ("AWB") is a limited liability company organized and existing under the laws of Delaware. AWB 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. AWB 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 the remedies and penalties sought herein.

III. VENUE AND JURISDICTION

11. 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.

- 12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendants conducted and continue to conduct business in this County as it relates to Products.
- 13. Defendants have sufficient minimum contacts in the State of California or otherwise purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would be 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)

- 14. Plaintiff incorporates by reference each and every allegation contained above.
- 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.
- 16. Defendants manufactured, imported, sold, and/or distributed Products containing lead in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the future.
- 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to lead through reasonably foreseeable use of the Products.
- 18. Products expose individuals to lead through direct ingestion. This exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As such, Defendants intend that consumers will ingest Products, exposing them to lead.
- 19. Defendants knew or should have known that the Products contained lead and exposed individuals to lead in the ways provided above. The Notice informed Defendants of the presence of lead in the Products. Likewise, media coverage concerning lead and related chemicals in consumer products provided constructive notice to Defendants.
 - 20. Defendants' actions in this regard were deliberate and not accidental.

1 PRAYER FOR RELIEF 2 Wherefore, Plaintiff prays for judgment against Defendants as follows: 3 Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that 4 damages total a minimum of \$1,000,000.00; 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 11 Respectfully submitted: 12 Dated: January 18, 2022 ENTORNO LAW, LLP 13 By: 14 Noam Glick Jake W. Schulte 15 Craig M. Nicholas 16 Attorneys for Plaintiff 17 Environmental Health Advocates, Inc. 18 19 20 21 22 23 24 25 26 27 28