

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

01/18/2022 at 01:41:41 PM

By: Shabra Iyamu, Deputy Clerk

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

Email: noam@entornolaw.com

Email: jake@entornolaw.com

Email: craig@entornolaw.com

Attorneys for Plaintiff

ENVIRONMENTAL HEALTH ADVOCATES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

WALONG MARKETING, INC., a California
corporation, TAWA SUPERMARKET, INC., a
California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No.: **22CV005669**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Environmental Health Advocates,
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendants’ failure to inform the People of exposure to lead and cadmium, two known
5 carcinogens. Defendants expose consumers to lead and cadmium by manufacturing, importing, selling,
6 and/or distributing Asian Taste Dried Shiitake Mushroom (“Products”). Defendants know and intend
7 that customers will ingest Products containing lead and cadmium.

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

13 3. California identified and listed lead as a chemical known to cause cancer as early as
14 October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February
15 27, 1987. California identified and listed cadmium as a chemical known to cause cancer as early as
16 October 1, 1987, and as a chemical known to cause developmental/reproductive toxicity on May 1,
17 1997.

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

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

II.
PARTIES

25
26
27 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
28 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 WALONG MARKETING, INC. (“Walong”) is a corporation organized and
4 existing under the laws of California. Walong 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 Walong manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

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

16 **III.**
17 **VENUE AND JURISDICTION**

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

22 12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
23 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
24 County. Defendants conducted and continues to conduct business in this County as it relates to
25 Products.

26 13. Defendants have sufficient minimum contacts in the State of California or otherwise
27 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be
28 consistent with traditional notions of fair play and substantial justice.

1 **IV.**
2 **CAUSES OF ACTION**

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

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

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

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

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

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

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

24 19. Defendants' actions in this regard were deliberate and not accidental.

25 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
26 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
27 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
28 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
California of the health hazards associated with exposures to lead and cadmium contained in the
Products.

