

1 **ENTORNO LAW, LLP**
Noam Glick (SBN 251582)
2 Jake W. Schulte (SBN 293777)
Craig M. Nicholas (SBN 178444)
3 225 Broadway, Suite 1900
San Diego, California 92101
4 Tel: (619) 629-0527
Email: noam@entornolaw.com
5 Email: jake@entornolaw.com
Email: craig@entornolaw.com
6

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
10/17/2022 at 04:13:04 PM
By: Xian-xii Bowie,
Deputy Clerk

7 Attorneys for Plaintiff
ENVIRONMENTAL HEALTH ADVOCATES, INC.
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

12 Plaintiff,

13 v.

14 MONTEZUMA'S DIRECT LTD., a United
Kingdom private limited company; LBB
DISTRIBUTION, INC., a California
15 corporation; LOLLI & POPS HOLDINGS,
LLC, a Delaware limited liability company;
16 and DOES 1 through 100, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No.: **22CV019863**

**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, known
5 carcinogens. Defendants expose consumers to lead and cadmium by manufacturing, importing, selling,
6 and/or distributing chocolate bars including, but not limited to, Montezuma’s Royal Mint Chocolate Bar
7 (“Products”). Defendants know and intend that customers will ingest Products containing lead and
8 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. California identified and listed cadmium as a chemical known to cause cancer as early as
17 October 1, 1987, and as a chemical known to cause developmental/reproductive toxicity on May 1,
18 1997.

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

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

26 ///

27 ///

28 ///

II.
PARTIES

1
2
3 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
4 corporation in the State of California dedicated to protecting the health of California citizens through
5 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
6 interest pursuant to Health and Safety Code, section 25249.7.

7 7. Defendant MONTEZUMA’S DIRECT LTD., (“Montezuma”) is a private limited
8 company organized and existing under the laws of the United Kingdom. Montezuma is registered to do
9 business in California, and does business in the County of Alameda, within the meaning of Health and
10 Safety Code, section 25249.11. Montezuma manufactures, imports, sells, or distributes the Products in
11 California and Alameda County.

12 8. Defendant LBB DISTRIBUTION, INC. (“LBB”) is a corporation organized and
13 existing under the laws of California. LBB is registered to do business in California, and does business
14 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. LBB
15 manufactures, imports, sells, or distributes the Products in California and Alameda County.

16 9. Defendant LOLLI & POPS HOLDINGS, LLC (“Lolli & Pops”) is a limited liability
17 company organized and existing under the laws of Delaware. Lolli & Pops is registered to do business
18 in California, and does business in the County of Alameda, within the meaning of Health and Safety
19 Code, section 25249.11. Lolli & Pops manufactures, imports, sells, or distributes the Products in
20 California and Alameda County.

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

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

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 and cadmium 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 and cadmium through reasonably foreseeable use of the Products.

18. Products expose individuals to lead and cadmium through direct ingestion. This exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of

1 commerce. As such, Defendants intend that consumers will ingest Products, exposing them to lead and
2 cadmium.

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

7 20. Defendants' actions in this regard were deliberate and not accidental.

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

14 22. The appropriate public enforcement agencies provided with the Notice failed to
15 commence and diligently prosecute a cause of action against Defendants.

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

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

22 *[Rest of page intentionally left blank.]*
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 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: October 13, 2022

ENTORNO LAW, LLP

13
14
15 By: 
16 Noam Glick

17 Jake W. Schulte
18 Craig M. Nicholas

19 Attorneys for Plaintiff
20 Environmental Health Advocates, Inc.