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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 LESSER EVIL LLC, a Delaware limited
liability company; WHOLE FOODS
MARKET CALIFORNIA, INC., a California
15 corporation; AMAZON.COM, INC., a
Delaware corporation; and DOES 1 through
16 100, inclusive,

17 Defendants.
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Case No.: **22CV019928**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

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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, a known carcinogen.
5 Defendants expose consumers to lead by manufacturing, importing, selling, and/or distributing puffed
6 snack foods (sometimes called “puffs”) including, but not limited to, LesserEvil Organic Himalayan
7 Pink Salt Sun Poppers (“Products”). Defendants know and intend that customers will ingest Products
8 containing lead.

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

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

II.
PARTIES

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26 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
27 corporation in the State of California dedicated to protecting the health of California citizens through
28

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 LESSER EVIL, LLC (“LE”) is a limited liability company organized and
4 existing under the laws of Delaware. LE is registered to do business in California, and does business in
5 the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. LE
6 manufactures, imports, sells, or distributes the Products in California and Alameda County.

7 8. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. (“Whole Foods”) is a
8 corporation organized and existing under the laws of California. Whole Foods 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. LE manufactures, imports, sells, or distributes the Products in California
11 and Alameda County.

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

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

22 **III.**
23 **VENUE AND JURISDICTION**

24 11. California Constitution Article VI, Section 10 grants the Superior Court original
25 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
26 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
27 has jurisdiction.
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1 12. 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 13. Defendants have sufficient minimum contacts in the State of California or otherwise
5 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
6 be 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 14. Plaintiff incorporates by reference each and every allegation contained above.

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

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

18 17. 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 through reasonably foreseeable use of the Products.

21 18. 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.

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

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

29 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
30 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff

1 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
2 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
3 California of the health hazards associated with exposures to lead contained in the Products.

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

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

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

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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 18, 2022

ENTORNO LAW, LLP

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15 By: 
16 Noam Glick

17 Jake W. Schulte

18 Craig M. Nicholas

19 Attorneys for Plaintiff

20 Environmental Health Advocates, Inc.