ELECTRONICALLY FILED Superior Court of California, 1 ENTORNO LAW, LLP County of Alameda Noam Glick (SBN 251582) 02/03/2023 at 02:46:39 PM Jake W. Schulte (SBN 293777) 2 Craig M. Nicholas (SBN 178444) By: Lynn Wiley, 3 Janani Natarajan (SBN 346770) Deputy Clerk 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 5 Email: noam@entornolaw.com Email: jake@entornolaw.com 6 Email: craig@entornolaw.com Email: janani@entornolaw.com 7 Attorneys for Plaintiff 8 ENVIRONMENTAL HEALTH ADVOCATES, INC. 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 IN AND FOR THE COUNTY OF ALAMEDA 11 23CV027313 ENVIRONMENTAL HEALTH ADVOCATES, Case No.: 12 INC., **COMPLAINT FOR CIVIL PENALTIES** Plaintiff, AND INJUNCTIVE RELIEF 13 v. 14 (Health & Safety Code § 25249.6 et seq.) BRAVO FARMS, a California limited 15 partnership; 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 Defendant's failure to inform the People of exposure to lead, a known carcinogen. Defendant exposes consumers to lead by manufacturing, importing, selling, and/or distributing chips including, but not limited to, Beetroot Chips 4oz ("Products"). Defendant knows and intends 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. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to lead in connection with Defendant's manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.
- 5. Plaintiff seeks injunctive relief compelling Defendant 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 Defendant for its violations of Proposition 65 along with attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

II. PARTIES

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 BRAVO FARMS ("Bravo") is a limited partnership organized and existing under the laws of California. Bravo 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. Bravo manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 8. 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.
- 9. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

III. <u>VENUE AND JURISDICTION</u>

- 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.
- 11. 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. Defendant conducted and continue to conduct business in this County as it relates to Products.
- 12. Defendant has sufficient minimum contacts in the State of California or otherwise purposefully avail themselves of the California market. Exercising jurisdiction over Defendant would be consistent with traditional notions of fair play and substantial justice.

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IV. CAUSES OF ACTION

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

- 13. Plaintiff incorporates by reference each and every allegation contained above.
- 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.
- 15. Defendant 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.
- 16. In manufacturing, importing, selling, and/or distributing Products, Defendant 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.
- 17. Products expose individuals to lead through direct ingestion. This exposure is a natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As such, Defendant intends that consumers will ingest Products, exposing them to lead.
- 18. Defendant knew or should have known that the Products contained lead and exposed individuals to lead in the ways provided above. The Notice informed Defendant of the presence of lead in the Products. Likewise, media coverage concerning lead and related chemicals in consumer products provided constructive notice to Defendant.
 - 19. Defendant's actions in this regard were deliberate and not accidental.
- 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead contained in the Products.
- 21. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendant.