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Superior Court of California,
County of Alameda

03/07/2024 at 04:09:41 PM

By: Lynetta Irvin,
Deputy Clerk

ENTORNO LAW, LLP

Noam Glick (SBN 251582)
Craig M. Nicholas (SBN 178444)
Jake W. Schulte (SBN 293777)
Janani Natarajan (SBN 346770)

225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 629-0527
Email: noam@entornolaw.com
Email: craig@entornolaw.com
Email: jake@entornolaw.com
Email: janani@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.

FOREST MUSHROOMS INC., a Minnesota
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: **24CV066887**

**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 Defendant's failure to inform the People of exposure to mercury and lead, known
5 carcinogens. Defendant exposes consumers to mercury and lead by manufacturing, importing, selling,
6 and/or distributing mushrooms including, but not limited to, Dried Champignon Mushrooms
7 (“Products”). Defendant knows and intends that customers will ingest Products containing mercury and
8 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 mercury as a chemical known to cause reproductive
15 toxicity as early as July 1, 1990.

16 4. California identified and listed lead as a chemical known to cause cancer as early as
17 October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February
18 27, 1987.

19 5. Defendant failed to sufficiently warn consumers and individuals in California about
20 potential exposure to mercury and lead in connection with Defendant's manufacture, import, sale, or
21 distribution of Products. This is a violation of Proposition 65.

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

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**II.
PARTIES**

7. 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.

8. Defendant FOREST MUSHROOMS INC. ("Forest") is a corporation organized and existing under the laws of Minnesota. Forest 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. Forest manufactures, imports, sells, or distributes the Products in California and Alameda County.

9. 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.

10. 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.

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**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. Defendant conducted and continues to conduct business in this County as it relates to Products.

1 13. Defendant has sufficient minimum contacts in the State of California or otherwise
 2 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
 3 consistent with traditional notions of fair play and substantial justice.

4 **IV.**
 5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Proposition 65 – Against all Defendants)**

8 14. Plaintiff incorporates by reference each and every allegation contained above.

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

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

15 17. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
 16 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
 17 to mercury and lead through reasonably foreseeable use of the Products.

18 18. Products expose individuals to mercury and lead through direct ingestion. This exposure
 19 is a natural and foreseeable consequence of Defendant placing Products into the stream of commerce.
 20 As such, Defendant intends that consumers will ingest Products, exposing them to mercury and lead.

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

26 20. Defendant's actions in this regard were deliberate and not accidental.

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1 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
2 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
3 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
4 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
5 California of the health hazards associated with exposures to mercury and lead contained in the Products.

6 22. The appropriate public enforcement agencies provided with the Notice failed to
7 commence and diligently prosecute a cause of action against Defendant.

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

11 24. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
12 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
13 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 Defendant 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;
- 5 2. A preliminary and permanent injunction against Defendant 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: March 7, 2024

ENTORNO LAW, LLP

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14 By: 
Noam Glick

15
16 Craig M. Nicholas
17 Jake W. Schulte
Janani Natarajan
18
19 Attorneys for Plaintiff
Environmental Health Advocates, Inc.