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2	Noam Glick (SBN 251582)	Superior Court of California,
	Craig M. Nicholas (SBN 178444) Jake W. Schulte (SBN 293777)	County of Alameda
3	Janani Natarajan (SBN 346770)	03/07/2024 at 04:00:24 PM By: Miagros Cortez,
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10	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
11	IN AND FOR THE COUNTY OF ALAMEDA	
12	ENVIRONMENTAL HEALTH ADVOCATES,	Case No.: 24CV066854
13	INC.,	
14	Plaintiff, v.	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
15		(Health & Safety Code § 25249.6 et seq.)
	I WON NUTRITION, CO., a Delaware corporation; SPROUTS FARMERS MARKET,	
16	INC., a Delaware corporation; and DOES 1 through 100, inclusive,	
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18	Defendants.	
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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 Defendants' failure to inform the People of exposure to mercury, a known reproductive toxin. Defendants expose consumers to mercury by manufacturing, importing, selling, and/or distributing protein snack including, but not limited to, I Won Organics Mesquite BBQ Protein Stix ("Products"). Defendants know and intend that customers will ingest Products containing mercury.
- 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 mercury as a chemical known to cause reproductive toxicity as early as July 1, 1990.
- 4. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to mercury in connection with Defendants' manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.
- 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers in California before exposing them to mercury in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for 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 I WON NUTRITION, CO. ("IWN") is a corporation organized and existing under the laws of Delaware. IWN 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. IWN manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 8. Defendant SPROUTS FARMERS MARKET, INC. ("Sprouts") is a corporation organized and existing under the laws of Delaware. Sprouts 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. Sprouts 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.

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.

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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 mercury 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 mercury through reasonably foreseeable use of the Products.
- 18. Products expose individuals to mercury through direct ingestion. This exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As such, Defendants intend that consumers will ingest Products, exposing them to mercury.
- 19. Defendants knew or should have known that the Products contained mercury (copy) and exposed individuals to mercury in the ways provided above. The Notice informed Defendants of the presence of mercury in the Products. Likewise, media coverage concerning mercury and related chemicals in consumer products provided constructive notice to Defendants.
 - 20. Defendants' actions in this regard were deliberate and not accidental.

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; 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: March 7, 2024 ENTORNO LAW, LLP 13 By: 14 15 16 Craig M. Nicholas Jake W. Schulte 17 Janani Natarajan 18 Attorneys for Plaintiff Environmental Health Advocates, Inc. 19 20 21 22 23 24 25 26 27 28