

04/26/2024

Chad Finke, Executive Officer / Clerk of the Court

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4 ENVIRONMENTAL HEALTH ADVOCATES, INC.

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

7 ENVIRONMENTAL HEALTH ADVOCATES,
8 INC.,

9 Plaintiff,

10 v.

11 FOODS ALIVE INC., an Indiana corporation;
12 and DOES 1 through 100, inclusive,

13 Defendants.

Case No.: 22CV024175

Assigned for All Purposes to:
Hon. Julia Spain, Dept. 520

**SECOND AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: December 19, 2022

FAC Filed: April 11, 2023

Trial: October 11, 2024

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I.
INTRODUCTION

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2 1. This Complaint is a representative action brought by Environmental Health Advocates, Inc.
3 (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff seeks
4 to remedy Defendant’s failure to inform the People of exposure to lead, a known carcinogen, and cadmium,
5 a known reproductive and developmental toxin. Defendant exposes consumers to lead by manufacturing,
6 importing, selling, and/or distributing crackers including, but not limited to, “Foods Alive Organic Flax
7 Crackers – Mexican Harvest.” Defendant also exposes consumers to lead and cadmium by manufacturing,
8 importing, selling, and/or distributing crackers including, but not limited to “Foods Alive Salsa Fresca
9 Sprouted Crisps.” Plaintiff is informed and believes that “Foods Alive Organic Flax Crackers – Mexican
10 Harvest” and “Foods Alive Salsa Fresca Sprouted Crisps” are the same product, despite having different
11 names. These crackers are hereafter collectively referred to as “Products.” Defendant knows and intends
12 that customers will ingest Products containing lead and/or cadmium.

13 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
14 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
15 business shall knowingly and intentionally expose any individual to a chemical known to the state to cause
16 cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . .”
17 (Health & Safety Code, § 25249.6.)

18 3. California identified and listed lead as a chemical known to cause cancer as early as
19 October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February 27,
20 1987.

21 4. California identified and listed cadmium as a chemical known to cause reproductive
22 toxicity as early as May 1, 1997.

23 5. Defendant failed to sufficiently warn consumers and individuals in California about
24 potential exposure to lead and/or cadmium in connection with Defendant’s manufacture, import, sale, or
25 distribution of Products. This is a violation of Proposition 65.

26 6. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
27 California before exposing them to lead and/or cadmium in Products. (Health & Safety Code, §
28

1 25249.7(a.) Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65 along
2 with attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

3
4 **II.**
PARTIES

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

9 8. Defendant FOODS ALIVE INC. (“Foods Alive”) is a corporation organized and existing
10 under the laws of Indiana. Foods Alive is registered to do business in California, and does business in the
11 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Foods Alive
12 manufactures, imports, sells, or distributes the Products in California and Alameda County.

13 9. Plaintiff does not know the true names and/or capacities, whether individual, partners, or
14 corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues said
15 defendants under fictitious names. Plaintiff is informed and believes and thereon alleges that these
16 Defendants are responsible in whole or in part for violation of the Labor Code sections described in this
17 Complaint.

18 10. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,
19 joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants
20 and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was
21 ratified by Defendants, and each of them.

22 **III.**
VENUE AND JURISDICTION

23
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.
28

1 21. On or around July 13, 2022, more than sixty days prior to naming each defendant in this
2 lawsuit, Plaintiff issued 60-Day Notice of Violation as required by and in compliance with Proposition 65
3 as to “Foods Alive Organic Flax Crackers – Mexican Harvest.” Plaintiff provided this Notice to the various
4 required public enforcement agencies along with a certificate of merit. The Notice alleged that Defendant
5 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
6 associated with exposures to lead and contained in the Products. On or around November 3, 2023, Plaintiff
7 issued a second 60-Day Notice of Violation as to "Foods Alive Organic Flax Crackers – Mexican Harvest.”
8 Plaintiff subsequently amended this Notice on December 11, 2023 to correct the product name. These are
9 collectively referred to as the “Notices.”

10 22. The appropriate public enforcement agencies provided with the Notices failed to
11 commence and diligently prosecute a cause of action against Defendant.

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

15 24. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
16 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also appropriate
17 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 \$1,000,000.00;

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.

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11 Respectfully submitted:

12 Dated: March 25, 2024

ENTORNO LAW, LLP

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