		ELECTRONICALLY FILED Superior Court of California
1	ENTORNO LAW, LLP	Superior Court of California County of Alameda
2	Noam Glick (SBN 251582) Craig M. Nicholas (SBN 178444)	04/26/2024 Chad Finke, Executive Officer / Clerk of the Court
3	Jake W. Schulte (SBN 293777)	By: D. Franklin Deputy
4	Janani Natarajan (SBN 346770) 225 Broadway, Suite 1900	
	San Diego, California 92101	
5	Tel: (619) 629-0527 Email: noam@entornolaw.com	
6	Email: craig@entornolaw.com	
7	Email: jake@entornolaw.com Email: janani@entornolaw.com	
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9	Attorneys for Plaintiff ENVIRONMENTAL HEALTH ADVOCATES,	INC.
10	SUPERIOR COURT OF T	THE STATE OF CALIFORNIA
11	IN AND FOR THE (COUNTY OF ALAMEDA
12	ENVIRONMENTAL HEALTH ADVOCATES, INC.,	Case No.: 22CV024175
13	Plaintiff,	Assigned for All Purposes to: Hon. Julia Spain, Dept. 520
14	V.	
15	FOODS ALIVE INC., an Indiana corporation; and DOES 1 through 100, inclusive,	SECOND AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
16	Defendants.	(Health & Safety Code § 25249.6 et seq.)
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18		Complaint Filed : December 19, 2022
19		FAC Filed: April 11, 2023 Trial : October 11, 2024
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1	I. <u>INTRODUCTION</u>	
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	A California identified and listed admium as a shamical known to cause reproductive	

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, §

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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. <u>PARTIES</u>

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.

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.

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 is informed and believes and thereon alleges that these
Defendants are responsible in whole or in part for violation of the Labor Code sections described in this
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.

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.

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1 12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure, 2 sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendant 3 conducted and continues to conduct business in this County as it relates to Products. 4 Defendant has sufficient minimum contacts in the State of California or otherwise 13. 5 purposefully avail itself of the California market. Exercising jurisdiction over Defendant would be 6 consistent with traditional notions of fair play and substantial justice. IV. 7 **CAUSES OF ACTION** 8 FIRST CAUSE OF ACTION (Violation of Proposition 65 – Against all Defendants) 9 10 14. Plaintiff incorporates by reference each and every allegation contained above. 11 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause 12 cancer, birth defects, and other reproductive harm. 13 16. Defendant manufactured, imported, sold, and/or distributed Products containing lead 14 and/or cadmium in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and 15 believes such violations have continued after receipt of the Notices (defined infra) and will continue to 16 occur into the future. 17 17. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to 18 provide a clear and reasonable warning to consumers and individuals in California who may be exposed to 19 lead and/or cadmium through reasonably foreseeable use of the Products. 20 18. Products expose individuals to lead and/or cadmium through direct ingestion. This 21 exposure is a natural and foreseeable consequence of Defendant placing Products into the stream of 22 commerce. As such, Defendant intends that consumers will ingest Products, exposing them to lead and 23 cadmium. 24 19. Defendant knew or should have known that the Products contained lead and cadmium, and 25 exposed individuals to lead and cadmium in the ways provided above. The Notices informed Defendant of 26 the presence of lead and cadmium in the Products. Likewise, media coverage concerning lead, cadmium, 27 and related chemicals in consumer products provided constructive notice to Defendant. 28 Defendant's actions in this regard were deliberate and not accidental. 20.

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	
13		
14	By: Noan Slich	
15	Noam Glick	
16	Jake W. Schulte Craig M. Nicholas	
17	Janani Natarajan	
18	Attorneys for Plaintiff	
19	Environmental Health Advocates, Inc.	
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