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Superior Court of California,  
County of Alameda

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

Plaintiff,

v.

ANDES HARVEST INC., a California  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: **24CV084173**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**I.**  
**INTRODUCTION**

1  
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 lead, a known carcinogen and  
5 developmental/reproductive toxin. Defendant exposes consumers to lead by manufacturing, importing,  
6 selling, and/or distributing dietary supplement powder including, but not limited to, Cherie Sweet Heart  
7 Matcha & Mushroom (“Products”). Defendant knows and intends that customers will ingest Products  
8 containing 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 lead as a chemical known to cause cancer as early as  
15 October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February  
16 27, 1987.

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

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

**II.**  
**PARTIES**

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

1 7. Defendant ANDES HARVEST INC. ("Andes") is a corporation organized and existing  
2 under the laws of California. Andes is registered to do business in California, and does business in the  
3 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Andes  
4 manufactures, imports, sells, or distributes the Products in California and Alameda County.

5 8. Plaintiff does not know the true names and/or capacities, whether individual, partners,  
6 or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues  
7 said Defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true  
8 names and capacities of these Defendants have been ascertained. Plaintiff is informed and believes and  
9 thereon alleges that these Defendants are responsible in whole or in part for the remedies and penalties  
10 sought herein.

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

15 **III.**  
16 **VENUE AND JURISDICTION**

17 10. California Constitution Article VI, Section 10 grants the Superior Court original  
18 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code  
19 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court  
20 has jurisdiction.

21 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil  
22 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
23 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

24 12. Defendant has sufficient minimum contacts in the State of California or otherwise  
25 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be  
26 consistent with traditional notions of fair play and substantial justice.

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28 ///

1 **IV.**  
2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

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

5 13. Plaintiff incorporates by reference each and every allegation contained above.

6 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
7 cause cancer, birth defects, and other reproductive harm.

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

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

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

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

22 19. Defendant's actions in this regard were deliberate and not accidental.

23 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
24 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff  
25 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
26 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in  
27 California of the health hazards associated with exposures to lead contained in the Products.

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

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

4           23.     Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of  
5 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also  
6 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: July 22, 2024

**ENTORNO LAW, LLP**

13  
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15  
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