To: Alameda County Superior Court Page 5 of 10 2020-11-03 00:19:46 (GMT)

16193930154 From: Samantha Dice

1 2 3 4 5 6 7 8 9 10	GLICK LAW GROUP, PC Noam Glick (SBN 251582) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 382-3400 Fax: (619) 393-0154 Email: noam@glicklawgroup.com NICHOLAS & TOMASEVIC, LLP Craig M. Nicholas (SBN 178444) Jake W. Schulte (SBN 293777) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 325-0492 Fax: (619) 325-0496 Email: cnicholas@nicholaslaw.org Email: jschulte@nicholaslaw.org Attorneys for Plaintiff Environmental Health Advocates, Inc.	<section-header>FILED BY FAXALAMEDA COUNTYNovember 03, 2020CLERK OFTHE SUPERIOR COURTBy Cheryl Clark, DeputyCASE NUMBER:RG20078863</section-header>	
12	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
13	IN AND FOR THE COUNTY OF ALAMEDA		
14	ENVIRONMENTAL HEALTH	Case No.:	
15	ADVOCATES, INC.,	COMPLAINT FOR CIVIL PENALTIES	
16	Plaintiff, v.	AND INJUNCTIVE RELIEF	
17	LIAN HWA FOODS (USA), INC., a	(Health & Safety Code § 25249.6 et seq.)	
18 19	California corporation, LIAN HWA FOODS CORP., a Taiwanese corporation, 99 RANCH MARKET, INC., a California corporation, and DOES 1 through 100, inclusive,		
20	Defendants.		
20	Dorondants.		
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COMPLAINT

I. INTRODUCTION

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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 acrylamide, a known
 carcinogen. Defendants expose consumers to acrylamide by manufacturing, importing, selling, and/or
 distributing Cadina Texas Fries Tomato Flavor ("Products"). Defendants know and intend that
 customers will ingest Products containing acrylamide.

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

3. California identified and listed acrylamide as a chemical known to cause cancer as early
as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February
of 2011.

4. Defendants failed to sufficiently warn consumers and individuals in California about
potential exposure to acrylamide in connection with Defendants' manufacture, import, sale, or
distribution of Products. This is a violation of Proposition 65.

Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
 in California before exposing them to acrylamide in Products. (Health & Safety Code, § 25249.7(a).)
 Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65 along with
 attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

II. <u>PARTIES</u>

6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a corporation organized 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 LIAN HWA FOODS (USA), INC. ("Defendant" or "LHF") is a corporation
 organized and existing under the laws of California. LHF 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. LHF manufactures, imports, sells, or distributes the Products in California and Alameda
 County.

8. Defendant LIAN HWA FOODS CORP. ("Defendant" or "LHFC") is a corporation
organized and existing under the laws of Taiwan. LHFC 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. LHFC manufactures, imports, sells, or distributes the Products in California and Alameda
County.

9. Defendant 99 RANCH MARKET, INC. ("Defendant" or "99RM") is a corporation
 organized and existing under the laws of California. 99RM is registered to do and does business in
 California, County of Alameda, within the meaning of California Health and Safety Code section
 25249.11. 99RM manufactures, imports, sells, or distributes Products in California and Alameda
 County.

16 10. Plaintiff does not know the true names and/or capacities, whether individual, partners,
17 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
18 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
19 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and
20 thereon alleges that these defendants are responsible in whole or in part for Plaintiff's alleged damages.

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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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.

13. Defendants had sufficient minimum contacts in the State of California or otherwise purposefully avails itself 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 acrylamide 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 acrylamide through reasonably foreseeable use of the Products.

18. Products expose individuals to acrylamide 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 acrylamide.

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

Defendants' action in this regard were deliberate and not accidental.

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 4 merit. The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn 5 consumers in California of the health hazards associated with exposures to acrylamide contained in 6 the Products. 7 22. The appropriate public enforcement agencies provided with the Notice failed to 8 commence and diligently prosecute a cause of action against Defendants. 9 23. Individuals exposed to acrylamide contained in Products through direct ingestion 10 resulting from reasonably foreseeable use of the Products have suffered and continue to suffer 11 irreparable harm. There is no other plain, speedy, or adequate remedy at law. 12 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation 13 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also 14 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 Defendants, and each of them, as follows:		
3	1.	1. Civil penalties in the amount of \$2,500 per day for each violation;	
4	2. A preliminary and permanent injunction against Defendants from manufacturing,		
5	importing, selling, and/or distributing Products in California without providing a clear and reasonable		
6	warning as required by Proposition 65 and related Regulations;		
7	3.	3. Reasonable attorney's fees and costs of suit; and	
8	4.	Such other and further relief as may be just and proper.	
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10	Respectfull	y submitted:	
11	Dated: Octo	ober 13, 2020 NICHOLAS & TOMASEVIC, LLP.	
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14		By: Jake Joh He	
15		Jake Schulte	
16		Craig Nicholas	
17		GLICK LAW GROUP, PC.	
18		Noam Glick	
19		Attorney for Plaintiff	
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