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 ENVIRONMENTAL HEALTH ADVOCATES, INC.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

13 ENVIRONMENTAL HEALTH ADVOCATES,  
 14 INC., a California corporation,

15 Plaintiff,

16 v.

17 BAY VALLEY FOODS, LLC, a Delaware  
 corporation, and DOES 1 through 100,  
 18 inclusive,

19 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES  
 AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**FILED BY FAX**

ALAMEDA COUNTY

May 29, 2020

CLERK OF  
 THE SUPERIOR COURT  
 By Milagros Cortez, Deputy

CASE NUMBER:

**HG20062781**

**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 acrylamide, a known  
5 carcinogen. Defendant exposes consumers to acrylamide by manufacturing, importing, selling, and/or  
6 distributing Kroger Honey Graham Crackers and Great Value Cinnamon Graham Crackers  
7 (“Products”). Defendant knows and intends 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.)

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

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

19           5.       Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in  
20 California before exposing them to acrylamide in Products. (Health & Safety Code, § 25249.7(a).)  
21 Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65 along with  
22 attorney’s fees 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 cause cancer, birth defects, and other reproductive harm.

2 15. Defendant manufactured, imported, sold, and/or distributed Products containing  
3 acrylamide in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and  
4 believes such violations have continued after receipt of the Notices (defined *infra*) and will continue to  
5 occur into the future.

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

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

12 18. Defendant knew or should have known that the Products contained acrylamide and  
13 exposed individuals to acrylamide in the ways provided above. The Notices informed Defendant of the  
14 presence of acrylamide in the Products. Likewise, media coverage concerning acrylamide and related  
15 chemicals in consumer products provided constructive notice to Defendant.

16 19. Defendant's action in this regard were deliberate and not accidental.

17 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
18 60-Day Notice of Violation ("Notice(s)") as required by and in compliance with Proposition 65 on  
19 August 24, 2018. Plaintiff provided the Notice to the various required public enforcement agencies  
20 along with a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing  
21 to sufficiently warn consumers in California of the health hazards associated with exposures to  
22 acrylamide contained in the Products.

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

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