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18193930154 From: Samantha Dice

1 **GLICK LAW GROUP, PC**
 2 Noam Glick (SBN 251582)
 225 Broadway, Suite 2100
 San Diego, California 92101
 3 Tel: (619) 382-3400
 Fax: (619) 393-0154
 4 Email: noam@glicklawgroup.com

5 **NICHOLAS & TOMASEVIC, LLP**
 Craig M. Nicholas (SBN 178444)
 6 Jake W. Schulte (SBN 293777)
 225 Broadway, Suite 1900
 7 San Diego, California 92101
 Tel: (619) 325-0492
 8 Email: cnicholas@nicholaslaw.org
 Email: jschulte@nicholaslaw.org
 9

10 Attorneys for Plaintiff
 Environmental Health Advocates, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **IN AND FOR THE COUNTY OF ALAMEDA**

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

15 Plaintiff,

16 v.

17 AMERIFOODS TRADING COMPANY,
 LLC., a California limited liability
 company, SMART & FINAL, INC., a
 18 Delaware corporation, and DOES 1 through
 100, inclusive,

19 Defendants.
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FILED BY FAX

ALAMEDA COUNTY

July 14, 2020

CLERK OF
THE SUPERIOR COURT
By Gina Fu, Deputy

CASE NUMBER:

RG20067555

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

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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 Defendants’ failure to inform the People of exposure to acrylamide, a known
5 carcinogen. Defendants expose consumers to acrylamide by manufacturing, importing, selling, and/or
6 distributing First Street Almonds Roasted & Salted (“Products”). Defendants know and intend that
7 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. Defendants failed to sufficiently warn consumers and individuals in California about
17 potential exposure to acrylamide in connection with Defendants’ manufacture, import, sale, or
18 distribution of Products. This is a violation of Proposition 65.

19 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
20 in California before exposing them to acrylamide in Products. (Health & Safety Code, § 25249.7(a).)
21 Plaintiff also seeks civil penalties against Defendants 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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24 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
25 corporation organized in the State of California dedicated to protecting the health of California citizens
26 through the elimination or reduction of toxic exposure from consumer products. It brings this action in
27 the public interest pursuant to Health and Safety Code, section 25249.7.
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IV.
CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Violation of Proposition 65 – Against all Defendants)

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

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

15. 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.

16. 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.

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

18. 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.

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

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

