

1 George Rikos, Esq. (SBN 204864)  
2 **LAW OFFICES OF GEORGE RIKOS**  
3 555 West Beech Street, Suite 500  
4 San Diego, CA 92101  
5 Telephone: (858) 342-9161  
6 Facsimile: (858) 724-1453  
7 Email: george@georgerikoslaw.com

8 Attorneys for Plaintiff,  
9 Brad Van Patten

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**11/30/2020** at 10:02:00 AM

Clerk of the Superior Court  
By Gen Dieu, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10  
11 BRAD VAN PATTEN, an individual

12 Plaintiff,

13 v.

14 INKA CROPS, S.A., a Peruvian corporation;  
15 and DOES 1 through 10

16 Defendants.

Case No. 37-2020-00043693-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

17  
18 Plaintiff Brad Van Patten (“Plaintiff”) brings this action in the interests of the general public  
19 and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of defendant Inka Crops. S.A. to  
22 warn individuals in California that they are being exposed to the chemical acrylamide by their  
23 product, Plantain Chips (“Product”).

24 2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to  
25 know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally  
26 expose individuals in California to chemicals known to the State to cause cancer, birth defects, or  
27 other reproductive harm without providing clear and reasonable warnings to individuals prior to  
28 exposure.





1 (“CCR”) §§ 25102(n).

2 15. Proposition 65 provides that any “person who violates or threatens to violate” the  
3 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.  
4 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a  
5 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).  
6 Violators are liable for visit penalties of up to \$2,500 per day for each violation of the Act. Health  
7 & Safety Code § 25249.7.

8 16. On January 1, 1990, the State of California officially listed the chemical acrylamide  
9 as a chemical known to cause cancer. Acrylamide became subject to the warning requirement one  
10 year later and was therefore subject to the “clear and reasonable” warning requirements of  
11 Proposition 65 beginning on January 1, 1991. Health & Safety Code § 25249.6 *et seq.*; 27 Cal.  
12 Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of acrylamide, the no significant risk  
13 legal for acrylamide is 0.2 µg/day (micrograms per day). 27 Cal. Code Regs. § 25705(b)(1).

14 **FACTUAL BACKGROUND**

15 17. To test Defendant’s Products for acrylamide, Plaintiff hired a well-  
16 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of the  
17 Products show that they were in violation of the 0.2 microgram per day (“µg/day”) for acrylamide  
18 “safe harbor” daily dose limits set forth in Proposition 65’s regulations.

19 18. Based on testing results, on August 7, 2020, Plaintiff sent a 60-Day Notice of  
20 Proposition 65 Violations (“Notice”) to defendant regarding the Product.

21 19. On the same day they were sent to Defendant, each Notice was also sent to the  
22 requisite public enforcement agencies.

23 20. The Notice described above was issued pursuant to, and in compliance with, the  
24 requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing regulations  
25 regarding the notice of the violations to be given to certain public enforcement agencies and to the  
26 violators. The Notice included, *inter alia*, the following information: the name, address, and  
27 telephone number of the noticing individuals; the name of the alleged violator; the statute violated;  
28 the approximate time period during which violations occurred; and descriptions of the violations,

1 including the chemical involved, the routes of toxic exposure, and the specific product or type of  
2 product causing the violations, and was issued as follows:

- 3 a. The relevant Defendant was provided a copy of the Notice by U.S. Mail.
- 4 b. The relevant Defendant was provided a copy of the document entitled “The  
5 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
6 Summary,” which is also known as Appendix A to Title 27 of Cal. Code Regs §  
7 25903.
- 8 c. The California Attorney General was provided a copy of the Notice via online  
9 submission.
- 10 d. The California Attorney General was provided with a Certificate of Merit by  
11 the attorney for the noticing party, stating that there is a reasonable and  
12 meritorious case for this action, and attaching factual information sufficient to  
13 establish a basis for the certificate, including the identity of the persons  
14 consulted with and relied on by the certified, and the facts, studies, or other data  
15 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 16 e. The district attorneys, city attorneys or prosecutors of each jurisdiction where  
17 the Product is offered for sale within California were provided with a copy of  
18 the Notice pursuant to Health & Safety Code § 25249.7(d)(1).

19 21. At least 60-days have elapsed since Plaintiff sent the Notice to Defendant.

20 The appropriate public enforcement agencies have failed to commence and diligently prosecute a  
21 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendant based on the  
22 allegations herein.

23 22. On information and belief, the Products have been manufactured,  
24 distributed, and/or sold by Defendant for consumption in California. On information and belief,  
25 the Product continues to be distributed and sold in California without the requisite warning  
26 information.

27 23. At all times relevant to this action, Defendant have knowingly and intentionally  
28 exposed the users of the Products to acrylamide without first giving a clear and reasonable

1 warning to such individuals.

2 24. As a proximate result of acts of Defendant as persons in the course of doing  
3 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the  
4 State of California, including the County of San Diego, have been exposed to acrylamide without  
5 a clear and reasonable warning. The individuals subject to the illegal exposures include normal  
6 and foreseeable users of the Products, as well as all other persons exposed to the Products.

7  
8 **FIRST CAUSE OF ACTION**  
9 **(Violations of Health and Safety Code § 25249.5, *et seq.*)**

10 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,  
11 inclusive, as if specifically set forth herein.

12 26. Defendant is a person doing business within the meaning of Health & Safety Code  
13 § 25249.11.

14 27. Acrylamide is listed on the State of California as a chemical known to cause  
15 cancer.

16 28. Defendant has and continues to knowingly and intentionally expose individuals  
17 who ingest the Products to the chemical acrylamide without first providing a clear and reasonable  
18 warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).

19 29. Continuing commission by Defendant of the acts alleged above will irreparably  
20 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
21 adequate remedy at law.

22  
23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiff prays for the following relief:

25 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §  
26 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in  
27 concert or participating with Defendants, from distributing or selling the Products in California  
28 without first providing a clear and reasonable warning that consumers of the Products are exposed

1 to acrylamide;

2           2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling  
3 Defendants to identify and locate each individual who has purchased the Product and to provide a  
4 warning to such persons that consumption of the Product will expose the consumers to a chemical  
5 known to cause cancer.

6           3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)  
7 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

8           4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to  
9 California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the  
10 Court; and,

11           5. Such other and further relief as may be just and proper.

13 DATED: November 30, 2020

**LAW OFFICES OF GEORGE RIKOS**

14  
15 *George Rikos*  
16 \_\_\_\_\_  
17 George Rikos  
18 Attorney for Plaintiff  
19 Brad Van Patten  
20  
21  
22  
23  
24  
25  
26  
27  
28