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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Erika Engel, Deputy Clerk

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 VICTORIA JAMISON, an individual

14 Plaintiff,

15 v.

16 BARNANA, PBC, a Delaware corporation;
17 AMAZON.COM, Inc., a Delaware
18 corporation; and DOES 1 through 10,
19 inclusive

20 Defendants.

Case No. 37-2021-00005804-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

21 Plaintiff Victoria Jamison (“Plaintiff”) brings this action in the interests of the general public
22 and, on information and belief, hereby alleges:

INTRODUCTION

23 1. This action seeks to remedy the continuing failure of defendants Barnana, PBC and
24 Amazon.com, Inc. to warn individuals in California that they are being exposed to the chemical
25 acrylamide by their product, the Barnana Plantain Chips (“Product”).

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

1 exposure.

2 3. When consumers eat the Products, they are exposed to acrylamide at
3 levels requiring a “clear and reasonable warning” under Proposition 65. Despite this fact,
4 Defendants have failed to provide any warning to consumers that they are being exposed to the
5 carcinogenic chemical acrylamide.

6 4. Defendants’ past and continued manufacturing, distribution, and sale of the Product
7 in California, without a clear and reasonable warning, causes individuals to be involuntarily and
8 unwittingly exposed to acrylamide at levels that violate Proposition 65.

9 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued
10 manufacturing, distribution, and/or sales of the Products in California without provision of clear
11 and reasonable warnings regarding the risks of cancer posed by exposure to acrylamide through
12 consumption of the Products. Plaintiff seeks an injunctive order compelling Defendants to bring
13 their business practices into compliance with Proposition 65 by providing a clear and reasonable
14 warning to each individual who has been and who in the future may be exposed to acrylamide
15 from consumption of the Products. Plaintiff also seeks an order compelling Defendants to identify
16 and locate each individual person who in the past has purchased the Product, and to provide to
17 each such purchaser a clear and reasonable warning that use of the Product will cause exposures to
18 acrylamide.

19 **JURISDICTION AND VENUE**

20 6. This Court has jurisdiction over this action pursuant to Health and Safety Code §
21 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and
22 pursuant to California Constitution Article VII, Section 10, which grants the Superior Court
23 “original jurisdiction in all causes except those given by statute to other courts.” The causes of
24 actions alleged herein are not given by statute to other trial courts.

25 7. This Court has jurisdiction over Defendants because Defendants are each a
26 business having sufficient minimum contacts with California, or otherwise intentionally availing
27 themselves of the California market through the distribution and sale of the Products in the State
28 of California to render the exercise of jurisdiction over this defendant by the California courts

1 consistent with traditional notions of fair play and substantial justice.

2 8. Venue in this action is proper in the San Diego Superior Court because Defendant
3 has violated or threaten to violate California law in the County of San Diego.

4 **PARTIES**

5 9. Plaintiff Victoria Jamison is a resident of San Diego County California and
6 working to protect human health and the environment. Plaintiff is a person with the meaning of
7 Health & Safety Code § 25118 and brings this enforcement action in the public interest pursuant to
8 Health & Safety Code § 25249.7(d).

9 10. Defendant Barnana, PBC. is a corporation organized under the State of Delaware
10 and is a person doing business with the meaning of Health & Safety Code § 25249.11. Defendant
11 Amazon.com, Inc. is a corporation organized under the State of Delaware and is a person doing
12 business with the meaning of Health & Safety Code § 25249.11.

13 11. Defendants have manufactured, packaged, distributed, marketed and/or offered the
14 Product for sale or use in California and the County of San Diego. Plaintiff is informed and
15 believes, and thereupon alleges, that Defendant continues to manufacture, package, distribute,
16 market and/or sell the Products in California and in San Diego County.

17 **STATUTORY BACKGROUND**

18 12. The People of the State of California have declared in Proposition 65 their right
19 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
20 reproductive harm.” Section 1(b) of Initiative Measure, Proposition 65.

21 13. To implement this goal, Proposition 65 requires that individuals be provided with a
22 “clear and reasonable warning” before being exposed to substances listed by the State of
23 California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in
24 pertinent part:

25 No person in the course of doing business shall knowingly and intentionally
26 expose any individual to a chemical known to the state to cause cancer or
27 reproductive toxicity without first giving clear and reasonable warning to such
28 individual...

14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or

1 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
2 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs.
3 (“CCR”) §§ 25102(n).

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

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

16 **FACTUAL BACKGROUND**

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

21 18. Based on testing results, on August 6, 2020, Plaintiff sent a 60-Day Notice of
22 Proposition 65 Violations (“Notice”) to defendant regarding the Product.

23 19. On the same day they were sent to Defendants, each Notice was also sent to the
24 requisite public enforcement agencies.

25 20. Each of the Notices described above were issued pursuant to, and in compliance
26 with, the requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing
27 regulations regarding the notice of the violations to be given to certain public enforcement
28 agencies and to the violators. Each of the Notices included, *inter alia*, the following information:

1 the name, address, and telephone number of the noticing individuals; the name of the alleged
2 violator; the statute violated; the approximate time period during which violations occurred; and
3 descriptions of the violations, including the chemical involved, the routes of toxic exposure, and
4 the specific product or type of product causing the violations, and was issued as follows:

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

21 21. At least 60-days have elapsed since Plaintiff sent each of the Notices to Defendants.
22 The appropriate public enforcement agencies have failed to commence and diligently prosecute a
23 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendants based on the
24 allegations herein.

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

1 23. At all times relevant to this action, Defendants have knowingly and intentionally
2 exposed the users of the Products to acrylamide without first giving a clear and reasonable
3 warning to such individuals.

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

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

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

14 26. Defendants are each a person doing business within the meaning of Health &
15 Safety Code § 25249.11.

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

18 28. Defendants have and continue to knowingly and intentionally expose individuals
19 who ingest the Products to the chemical acrylamide without first providing a clear and reasonable
20 warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).

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

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PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

1. A preliminary and permanent injunction, pursuant to Health & Safety Code § 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from distributing or selling the Products in California without first providing a clear and reasonable warning that consumers of the Products are exposed to acrylamide;
2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling Defendants to identify and locate each individual who has purchased the Product and to provide a warning to such persons that consumption of the Products will expose the consumers to a chemical known to cause cancer.
3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b) against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;
4. An award to Plaintiff of its reasonable attorney’s fees and costs of suit pursuant to California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the Court; and,
5. Such other and further relief as may be just and proper.

DATED: February 8, 2021

LAW OFFICES OF GEORGE RIKOS

George Rikos

George Rikos
Attorney for Plaintiff
Victoria Jamison