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ENVIRONMENTAL HEALTH ADVOCATES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH ADVOCATES, INC.,

Plaintiff,

v.

B&G FOODS NORTH AMERICA, INC, a
Delaware corporation, AMAZON.COM, INC.
a Delaware corporation, BERKELEY BOWL
PRODUCE, INC, a California corporation, and
DOES 1 through 100, inclusive,

Defendants.

Case No.: RG21086510

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

FILED BY FAX

ALAMEDA COUNTY

January 29, 2021

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG21086510

I.
INTRODUCTION

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2 1. This Complaint is a representative action brought by Environmental Health
3 Advocates, Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the
4 People”). Plaintiff seeks to remedy Defendants’ failure to inform the People of exposure to
5 acrylamide, a known carcinogen. Defendants exposed consumers to acrylamide by manufacturing,
6 importing, selling, and/or distributing New York Flatbreads Everything and SnackWell’s Chocolate
7 Crème Sandwich Cookies (“Products”). Defendants know and intend that customers will ingest
8 Products containing acrylamide.

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

14 3. California identified and listed acrylamide as a chemical known to cause cancer as
15 early as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity on
16 February 25, 2011.

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

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

II.
PARTIES

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26 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
27 corporation in the State of California dedicated to protecting the health of California citizens through
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1 the elimination or reduction of toxic exposure from consumer products. It brings this action in the
2 public interest pursuant to Health and Safety Code, section 25249.7.

3 7. Defendant B&G FOODS NORTH AMERICA, INC. (“B&G”) is a corporation
4 organized and existing under the laws of Delaware. B&G is registered to do business in California,
5 and does business in the County of Alameda, within the meaning of Health and Safety Code, section
6 25249.11. B&G manufactures, imports, sells, or distributes the Products in California and Alameda
7 County.

8 8. Defendant AMAZON.COM, INC. (Amazon) is a corporation organized and existing
9 under the laws of Delaware. Amazon is registered to do business in California, and does business in
10 the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Amazon
11 manufactures, imports, sells, or distributes the Products in California and Alameda County.

12 9. Defendant BERKELEY BOWL PRODUCE, INC. (Berkeley Bowl) is a corporation
13 organized and existing under the laws of California. Berkeley Bowl is registered to do business in
14 California, and does business in the County of Alameda, within the meaning of Health and Safety
15 Code, section 25249.11. Berkeley Bowl manufactures, imports, sells, or distributes the Products in
16 California and Alameda County.

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

24
25 **III.**
VENUE AND JURISDICTION

26 11. California Constitution Article VI, Section 10 grants the Superior Court original
27 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
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1 statute upon which this action is based does not give jurisdiction to any other court. As such, this
2 Court has jurisdiction.

3 12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
4 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
5 County. Defendant conducted and continues to conduct business in this County as it relates to
6 Products.

7 13. Defendant has sufficient minimum contacts in the State of California or otherwise
8 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be
9 consistent with traditional notions of fair play and substantial justice.

10 **IV.**
11 **CAUSES OF ACTION**

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

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

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

17 16. Defendant(s) manufactured, imported, sold, and/or distributed Products containing
18 acrylamide in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and
19 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to
20 occur into the future.

21 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
22 provide a clear and reasonable warning to consumers and individuals in California who may be
23 exposed to acrylamide through reasonably foreseeable use of the Products.

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

27 19. Defendants knew or should have known that the Products contained acrylamide and
28 exposed individuals to acrylamide in the ways provided above. The Notice informed Defendants of

1 the presence of acrylamide in the Products. Likewise, media coverage concerning acrylamide and
2 related chemicals in consumer products provided constructive notice to Defendants.

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

4 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
5 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
6 provided the Notice to the various required public enforcement agencies along with a certificate of
7 merit. The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn
8 consumers in California of the health hazards associated with exposures to acrylamide contained in the
9 Products.

10 22. The appropriate public enforcement agencies provided with the Notice failed to
11 commence and diligently prosecute a cause of action against Defendants.

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

15 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
16 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
17 appropriate pursuant to Health and Safety Code, section 25249.7(a).

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff prays for judgment against Defendants as follows:

20 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
21 damages total a minimum of \$1,000,000.

22 2. A preliminary and permanent injunction against Defendants from manufacturing,
23 importing, selling, and/or distributing Products in California without providing a clear and reasonable
24 warning as required by Proposition 65 and related Regulations;

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- 1 3. Reasonable attorney’s fees and costs of suit; and
2 4. Such other and further relief as may be just and proper.

3 Respectfully submitted:

4 Dated: February 2, 2021

GLICK LAW GROUP, PC

7 By:



8 Noam Glick

9 **NICHOLAS & TOMASEVIC, LLP**

10 Craig M. Nicholas
11 Jake W. Schulte

12 Attorneys for Plaintiff
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