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From: Samantha Dice

FILED BY FAX ALAMEDA COUNTY 1 GLICK LAW GROUP, PC Noam Glick (SBN 251582) June 10, 2021 2 225 Broadway, Suite 1900 CLERK OF San Diego, California 92101 THE SUPERIOR COURT By Milagros Cortez, Deputy 3 Tel: (619) 382-3400 Fax: (619) 393-0154 CASE NUMBER: Email: noam@glicklawgroup.com 4 RG21101700 5 NICHOLAS & TOMASEVIC, LLP Craig M. Nicholas (SBN 178444) Jake W. Schulte (SBN 293777) 6 225 Broadway, Suite 1900 7 San Diego, California 92101 Tel: (619) 325-0492 8 Email: enicholas@nicholaslaw.org Email: jschulte@nicholaslaw.org 9 Attorneys for Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. 10 SUPERIOR COURT OF THE STATE OF CALIFORNIA 11 12 IN AND FOR THE COUNTY OF ALAMEDA ENVIRONMENTAL HEALTH ADVOCATES, Case No.: 13 INC., 14 COMPLAINT FOR CIVIL PENALTIES Plaintiff. AND INJUNCTIVE RELIEF 15 (Health & Safety Code § 25249.6 et seq.) 16 BRISTOL FARMS, a California corporation, KII NATURALS, INC. a Canada corporation, and DOES 1 through 100, inclusive, 17 Defendants. 18 19 20 21 22 23 24 25 26 27 28

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#### I. INTRODUCTION

- 1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff seeks to remedy Defendants' failure to inform the People of exposure to acrylamide, a known carcinogen. Defendants exposed consumers to acrylamide by manufacturing, importing, selling, and/or distributing Kii Naturals Organic Artisan Crisps ("Product"). Defendants know and intend that customers will ingest Products containing acrylamide.
- 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code, section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . ." (Health & Safety Code, § 25249.6.)
- 3. California identified and listed acrylamide as a chemical known to cause cancer as early as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity on February 25, 2011.
- 4. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to acrylamide in connection with Defendants' manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.
- 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers in California before exposing them to acrylamide in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65 along with attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

#### II. <u>PARTIES</u>

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

- 7. Defendant BRISTOL FARMS is a corporation organized and existing under the laws of California. Bristol Farms is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Bristol Farms manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 8. Defendant KII NATURALS, INC. (Kii Naturals) is a corporation organized and existing under the laws of Canada. Kii Naturals is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Kii Naturals manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 9. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that these defendants are responsible in whole or in part for Plaintiff's alleged damages.

#### III. VENUE AND JURISDICTION

- 10. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.
- 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendants conducted and continue to conduct business in this County as it relates to Products.

12. Defendants have sufficient minimum contacts in the State of California or otherwise purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be consistent with traditional notions of fair play and substantial justice.

## 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. Defendant(s) 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 Defendants 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 Defendants.
  - 19. Defendants' actions 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

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: June 9		GLICK LAW GROUP, PC
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7		Ву:	Noam Sleit
8			Noam Glick
9			NICHOLAS & TOMASEVIC, LLP
10			Craig M. Nicholas
11			Jake W. Schulte
12			Attorneys for Plaintiff Environmental Health Advocates, Inc.
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