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FILED BY FAX ALAMEDA COUNTY GLICK LAW GROUP, PC 1 Noam Glick (SBN 251582) February 11, 2021 2 225 Broadway, Suite 1900 CLERK OF San Diego, California 92101 THE SUPERIOR COURT 3 Tel: (619) 382-3400 By Joanne Downie, Deputy Fax: (619) 393-0154 CASE NUMBER: 4 Email: noam@glicklawgroup.com RG21088648 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: cnicholas@nicholaslaw.org Email: ischulte@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 ADVOCATES. Case No.: 14 INC., COMPLAINT FOR CIVIL PENALTIES 15 Plaintiff, AND INJUNCTIVE RELIEF ٧. 16 (Health & Safety Code § 25249.6 et seq.) CORPORACIÓN DINANT, S.A. de C.V., a 17 Honduran corporation, MI RANCHO SUPERMARKET (SAN JOSE), INC., a 18 California corporation, MEXILINK INCOPORATED, a Texas corporation, and 19 DOES I through 100, inclusive, 20 Defendants. 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 expose consumers to acrylamide by manufacturing, importing, selling, and/or distributing Zambos Chile Limon Flavored Plantain Chips ("Products"). 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 CORPORACIÓN DINANT, S.A. de C.V. ("Dinant") is a corporation organized and existing under the laws of Honduras. Dinant 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. Dinant manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 8. Defendant MI RANCHO SUPERMARKET (SAN JOSE), INC. ("Mi Rancho") is a corporation organized and existing under the laws of California. Mi Rancho 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. Mi Rancho manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 9. Defendant MEXILINK INCORPORATED ("Mexilink") is a corporation organized and existing under the laws of Texas. Mexilink 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. Mexilink manufactures, imports, sells, or distributes the Products in California and Alameda County.
- 10. 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

- 11. 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.
- 12. 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 continues to conduct business in this County as it relates to Products.

13. 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)

- 14. Plaintiff incorporates by reference each and every allegation contained above.
- 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
  - 20. Defendants' action in this regard were deliberate and not accidental.
- 21. 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.

## 1 PRAYER FOR RELIEF 2 Wherefore, Plaintiff prays for judgment against Defendants as follows: 3 Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that 4 damages total a minimum of \$1,000,000; 5 2. A preliminary and permanent injunction against Defendants from manufacturing, 6 importing, selling, and/or distributing Products in California without providing a clear and reasonable 7 warning as required by Proposition 65 and related Regulations; 8 3. Reasonable attorney's fees and costs of suit; and 9 4. Such other and further relief as may be just and proper. 10 Respectfully submitted: 11 Dated: February 5, 2021 GLICK LAW GROUP, PC 12 13 14 15 By: 16 Noam Glick 17 NICHOLAS & TOMASEVIC, LLP 18 Craig M. Nicholas 19 Jake W. Schulte 20 Attorneys for Plaintiff Environmental Health Advocates, Inc. 21 22 23 24 25 26 27 28