

To: 15102671546

Page: 2 of 9

2021-01-22 18:32:10 GMT

16193930154

From: Samantha Dice

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GLICK LAW GROUP, PC
Noam Glick (SBN 251582)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 382-3400
Fax: (619) 393-0154
Email: noam@glicklawgroup.com

NICHOLAS & TOMASEVIC, LLP
Craig M. Nicholas (SBN 178444)
Jake W. Schulte (SBN 293777)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 325-0492
Email: cnicholas@nicholaslaw.org
Email: jschulte@nicholaslaw.org

Attorneys for Plaintiff
ENVIRONMENTAL HEALTH ADVOCATES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

GEMINI FOOD CORPORATION, a
California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No.:
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

FILED BY FAX
ALAMEDA COUNTY
January 22, 2021
CLERK OF
THE SUPERIOR COURT
By Lynn Wiley, Deputy
CASE NUMBER:
RG21086502

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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 Defendant’s failure to inform the People of exposure to acrylamide, a known carcinogen. Defendant exposed consumers to acrylamide by manufacturing, importing, selling, and/or distributing Chocolate & Peanut Butter Wafer Pies (“Product”). Defendant knew and intended that customers will ingest the Product 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. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to acrylamide in connection with Defendant’s manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

5. Plaintiff seeks injunctive relief compelling Defendant 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 Defendant for its violations of Proposition 65 along with attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

25
26
27
28

II.
PARTIES

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.

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

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

7 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
8 provide a clear and reasonable warning to consumers and individuals in California who may be
9 exposed to acrylamide through reasonably foreseeable use of the Products.

10 16. Products expose individuals to acrylamide through direct ingestion. This exposure is a
11 natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As
12 such, Defendant intended that consumers will ingest Products, exposing them to acrylamide.

13 17. Defendant knew or should have known that the Products contained acrylamide and
14 exposed individuals to acrylamide in the ways provided above. The Notice informed Defendant of the
15 presence of acrylamide in the Products. Likewise, media coverage concerning acrylamide and related
16 chemicals in consumer products provided constructive notice to Defendant.

17 18. Defendant' action in this regard was deliberate and not accidental.

18 19. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
19 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
20 provided the Notice to the various required public enforcement agencies along with a certificate of
21 merit. The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn
22 consumers in California of the health hazards associated with exposures to acrylamide contained in the
23 Products.

24 20. The appropriate public enforcement agencies provided with the Notice failed to
25 commence and diligently prosecute a cause of action against Defendant.

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

1 21. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation
2 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
3 appropriate pursuant to Health and Safety Code, section 25249.7(a).

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for judgment against Defendant as follows:

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

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

11 3. Reasonable attorney's fees and costs of suit; and

12 4. Such other and further relief as may be just and proper.

13 Respectfully submitted:

14 Dated: January 22, 2021

GLICK LAW GROUP, PC

15
16
17 By:



Noam Glick

NICHOLAS & TOMASEVIC, LLP

Craig M. Nicholas
Jake W. Schulte

Attorneys for Plaintiff
Environmental Health Advocates, Inc.