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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.

LAGO USA, INC., 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 11, 2021
CLERK OF
THE SUPERIOR COURT
By Lynn Wiley, Deputy
CASE NUMBER:
HG21085439

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Environmental Health Advocates,
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendant’s failure to inform the People of exposure to acrylamide, a known
5 carcinogen. Defendant exposes consumers to acrylamide by manufacturing, importing, selling, and/or
6 distributing Gastone Lago Hazelnut Wafers and Lago Wafer Cookies with Chocolate Cream Filling
7 Sugar Free (“Products”). Defendant knows and intends that customers will ingest Products containing
8 acrylamide.

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

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

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

20 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
21 California before exposing them to acrylamide in Products. (Health & Safety Code, § 25249.7(a).)
22 Plaintiff also seeks civil penalties against Defendant 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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25
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
28

1 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
2 interest pursuant to Health and Safety Code, section 25249.7.

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

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

12 **III.**
13 **VENUE AND JURISDICTION**

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

18 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
19 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
20 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

21 11. Defendant has sufficient minimum contacts in the State of California or otherwise
22 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
23 consistent with traditional notions of fair play and substantial justice.

24 **IV.**
25 **CAUSES OF ACTION**

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

27 12. Plaintiff incorporates by reference each and every allegation contained above.

28 13. Proposition 65 mandates that citizens be informed about exposures to chemicals that

1 cause cancer, birth defects, and other reproductive harm.

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

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

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

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

16 18. Defendant's action in this regard were deliberate and not accidental.

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

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

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

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

1 appropriate pursuant to Health and Safety Code, section 25249.7(a).

2 **PRAYER FOR RELIEF**

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

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

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

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

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

11 Respectfully submitted:

12 Dated: January 11, 2021

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17 By:



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