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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.

FRITO-LAY, INC., a California corporation,  
and DOES 1 through 100, inclusive,

Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**FILED BY FAX**

ALAMEDA COUNTY

January 14, 2021

CLERK OF  
THE SUPERIOR COURT  
By Keisha Ghee, Deputy

CASE NUMBER:

**HG21085903**

**I.**  
**INTRODUCTION**

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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 exposes consumers to acrylamide by manufacturing, importing, selling, and/or distributing Gamesa Animalitos cookies, Gamesa Roscas cookies, and other cookies in the Gamesa brand (“Products”). Defendant knows and intends 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. 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 violation of Proposition 65 along with attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

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**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.

7. Defendant FRITO-LAY, INC. (“Frito-Lay”) is a corporation organized and existing under the laws of California. Frito-Lay 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. Frito-Lay manufactures, imports, sells, or distributes the Products in California and Alameda County.

8. 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**

9. 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.

10. 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. Defendant conducted and continues to conduct business in this County as it relates to Products.



1           19.       More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
2 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff  
3 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
4 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in  
5 California of the health hazards associated with exposures to acrylamide contained in the Products.

6           20.       The appropriate public enforcement agencies provided with the Notice failed to  
7 commence and diligently prosecute a cause of action against Defendant.  
8

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

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

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V.  
**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that damages total a minimum of \$1,000,000;
2. A preliminary and permanent injunction against Defendant from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;
3. Reasonable attorney's fees and costs of suit; and
4. Such other and further relief as may be just and proper.

Respectfully submitted:

Dated: January 14, 2021

**GLICK LAW GROUP, PC**

By:

  
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