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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.  
  
Lesser Evil LLC, a Delaware limited liability  
company, WHOLE FOODS MARKET  
CALIFORNIA, 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  
  
June 18, 2021  
  
CLERK OF  
THE SUPERIOR COURT  
By Xian-xii Bowie, Deputy  
  
CASE NUMBER:  
**HG21102529**

**I.**  
**INTRODUCTION**

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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 Defendants’ failure to inform the People of exposure to acrylamide, a known  
5 carcinogen. Defendants expose consumers to acrylamide by manufacturing, importing, selling, and/or  
6 distributing LesserEvil Paleo Puffs Fiery Hot (“Products”). Defendants know and intend that customers  
7 will ingest Products containing acrylamide.

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

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

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

19           5.       Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers  
20 in California before exposing them to acrylamide in Products. (Health & Safety Code, § 25249.7(a).)  
21 Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65 along with  
22 attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

**II.**  
**PARTIES**

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



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**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. 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.

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' action 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 consumers in California of the health hazards associated with exposures to acrylamide contained in the Products.

21. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendants.

