



**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 Defendant's failure to inform the People of exposure to acrylamide, a known  
5 carcinogen. Defendant expose consumers to acrylamide by manufacturing, importing, selling, and/or  
6 distributing Herdez Tortilla Chips ("Products"). Defendant know and intend that customers will ingest  
7 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.       Defendant failed to sufficiently warn consumers and individuals in California about  
17 potential exposure to acrylamide in connection with Defendant's 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 Defendant 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.



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

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

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

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

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

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

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

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

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

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**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendants 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: March 18, 2021

**GLICK LAW GROUP, PC**

By:   
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