1 2 3 4	George Rikos, Esq. (SBN 204864) LAW OFFICES OF GEORGE RIKOS 555 West Beech Street, Suite 500 San Diego, CA 92101 Telephone: (858) 342-9161 Facsimile: (858) 724-1453 Email: george@georgerikoslaw.com	ELECTRONICALLY FILED Superior Court of California, County of San Diego 09/15/2021 at 10:32:43 AM Clerk of the Superior Court By Erika Engel,Deputy Clerk		
5 6	Attorneys for Plaintiff, Charles Jamison			
7				
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	COUNTY OF SAN DIEGO			
10				
11	CHARLES JAMISON, an individual	Case No. 37-2021-00039288-CU-MC-CTL		
12	Plaintiff,	COMPLAINT FOR INJUNCTIVE		
13	v.	RELIEF AND CIVIL PENALTIES		
14	AMIGOFOODS, Corp., a Florida corporation; REX DISCOUNT, INC., a Florida corporation			
15	and DOES 1 through 10			
16	Defendants.			
17				
18		, , , , , , , , , , , , , , , , , , , ,		
19	Plaintiff Charles Jamison ("Plaintiff") brings this action in the interests of the general public			
20	and, on information and belief, hereby alleges:			
21	<u>INTRODUCTION</u>			
22		ontinuing failure of defendants to warn individuals		
23	in California that they are being exposed to the chemical acrylamide by their product, Plantain Chips			
24	("Product").			
25	2. California's Proposition 65 (Health & Safety Code § 25249.5, <i>et seq.</i>), is a right to			
26	know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally			
27	expose individuals in California to chemicals know	own to the State to cause cancer, birth defects, or		
28	other reproductive harm without providing clear	and reasonable warnings to individuals prior to		
	СОМІ	1 PLAINT		

1 || exposure.

3. When consumers eat the Products, they are exposed to acrylamide at
levels requiring a "clear and reasonable warning" under Proposition 65. Despite this fact,
Defendant has failed to provide any warning to consumers that they are being exposed to the
carcinogenic chemical acrylamide.

6 4. Defendants' past and continued manufacturing, distribution, and sale of the Product
7 in California, without a clear and reasonable warning, causes individuals to be involuntarily and
8 unwittingly exposed to acrylamide at levels that violate Proposition 65.

9 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued 10 manufacturing, distribution, and/or sales of the Products in California without providing clear and 11 reasonable warnings regarding the risks of cancer posed by exposure to acrylamide through 12 consumption of the Products. Plaintiff seeks an injunctive order compelling Defendant to bring 13 their business practices into compliance with Proposition 65 by providing a clear and reasonable 14 warning to each individual who has been and who in the future may be exposed to acrylamide 15 from consumption of the Products. Plaintiff also seeks an order compelling Defendants to identify 16 and locate each individual person who in the past has purchased the Product, and to provide to 17 each such purchaser a clear and reasonable warning that use of the Product will cause exposures to 18 acrylamide.

19

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Health and Safety Code §
25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and
pursuant to California Constitution Article VII, Section 10, which grants the Superior Court
"original jurisdiction in all causes except those given by statute to other courts." The causes of
actions alleged herein are not given by statute to other trial courts.

7. This Court has jurisdiction over Defendants because Defendants are a business
having sufficient minimum contacts with California, or otherwise intentionally availing
themselves of the California market through the distribution and sale of the Products in the State
of California to render the exercise of jurisdiction over this defendant by the California courts

1	consistent with traditional notions of fair play and substantial justice.		
2	8. Venue in this action is proper in the San Diego Superior Court because Defendants		
3	have violated or threaten to violate California law in the County of San Diego.		
4	PARTIES		
5	9. Plaintiff Charles Jamison is a resident of San Diego County California and working		
6	to protect human health and the environment by curbing the use of harmful products. Plaintiff is a		
7	person within the meaning of Health & Safety Code § 25118 and brings this enforcement action in		
8	the public interest pursuant to Health & Safety Code § 25249.7(d).		
9	10. Defendant AMIGOFOODS, Corp, on information and belief, is a Florida		
10	corporation organized under the laws Florida and is a person doing business within the meaning of		
11	Health & Safety Code § 25249.11. Defendant REX DISCOUNT, INC, Corp., on information and		
12	belief, is a Florida corporation organized under the laws Florida and is a person doing business		
13	within the meaning of Health & Safety Code § 25249.11.		
14	11. Defendants have manufactured, packaged, distributed, marketed and/or offered the		
15	Product for sale or use in California and the County of San Diego. Plaintiff is informed and		
16	believes, and thereupon alleges, that Defendants continue to manufacture, package, distribute,		
17	market and/or sell the Products in California and in San Diego County.		
18	STATUTORY BACKGROUND		
19	12. The People of the State of California have declared in Proposition 65 their right		
20	"[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other		
21	reproductive harm." Section 1(b) of Initiative Measure, Proposition 65.		
22	13. To implement this goal, Proposition 65 requires that individuals be provided with a		
23	"clear and reasonable warning" before being exposed to substances listed by the State of		
24	California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in		
25	pertinent part:		
26	No person in the course of doing business shall knowingly and intentionally		
27	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		
28	individual		
	3		
	COMPLAINT		

14. "Knowingly' refers to knowledge of the fact that a discharge of, release of, or
 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
 knowledge that the discharge, release or exposure is unlawful is required." 27 Cal. Code of Regs.
 ("CCR") §§ 25102(n).

5 15. Proposition 65 provides that any "person who violates or threatens to violate" the
6 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.
7 The phrase "threaten to violate" is defined to mean creating "a condition in which there is a
8 substantial probability that a violation will occur." Health & Safety Code § 25249.11(e).
9 Violators are liable for visit penalties of up to \$2,500 per day for each violation of the Act. Health
10 & Safety Code § 25249.7.

11 16. On January 1, 1990, the State of California officially listed the chemical acrylamide
12 as a chemical known to cause cancer. Acrylamide became subject to the warning requirement one
13 year later and was therefore subject to the "clear and reasonable" warning requirements of
14 Proposition 65 beginning on January 1, 1991. Health & Safety Code § 25249.6 *et seq.*; 27 Cal.
15 Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of acrylamide, the no significant risk
16 legal for acrylamide is 0.2 µg/day (micrograms per day). 27 Cal. Code Regs. § 25705(b)(1).

17

FACTUAL BACKGROUND

18 17. To test Defendants' Products for acrylamide, Plaintiff hired a well19 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of the
20 Products show that they were in violation of the 0.2 microgram per day ("µg/day") for acrylamide
21 "safe harbor" daily dose limits set forth in Proposition 65's regulations.

18. Based on testing results, on June 18, 2021, Plaintiff sent a 60-Day Notice of
Proposition 65 Violations ("Notice") to defendants regarding the Product.

24 19. On the same day they were sent to Defendants, each Notice was also sent to the
25 requisite public enforcement agencies.

26 20. The Notice described above was issued pursuant to, and in compliance with, the
27 requirements of Health & Safety Code § 25249.7(d) and the statute's implementing regulations
28 regarding the notice of the violations to be given to certain public enforcement agencies and to the

violators. The Notice included, *inter alia*, the following information: the name, address, and
 telephone number of the noticing individuals; the name of the alleged violator; the statue violated;
 the approximate time period during which violations occurred; and descriptions of the violations,
 including the chemical involved, the routes of toxic exposure, and the specific product or type of
 product causing the violations, and was issued as follows:

6	a.	The relevant Defendants were provided a copy of the Notice by U.S. Mail.
7	b.	The relevant Defendant were provided a copy of the document entitled "The
8		Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
9		Summary," which is also known as Appendix A to Title 27 of Cal. Code Regs §
10		25903.
11	c.	The California Attorney General was provided a copy of the Notice via online
12		submission.
13	d.	The California Attorney General was provided with a Certificate of Merit by
14		the attorney for the noticing party, stating that there is a reasonable and
15		meritorious case for this action, and attaching factual information sufficient to
16		establish a basis for the certificate, including the identity of the persons
17		consulted with and relied on by the certified, and the facts, studies, or other data
18		reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
19	e.	The district attorneys, city attorneys or prosecutors of each jurisdiction where
20		the Product is offered for sale within California were provided with a copy of
21		the Notice pursuant to Health & Safety Code § 25249.7(d)(1).
22	21. At	least 60-days have elapsed since Plaintiff sent the Notice to Defendants.
23	The appropriate public enforcement agencies have failed to commence and diligently prosecute a	
24	cause of action under Health & Safety Code § 25249.5, et seq. against Defendants based on the	
25	allegations herein.	
26	22. O1	n information and belief, the Products have been manufactured,
27	distributed, and/or sold by Defendants for consumption in California. On information and belief,	
28	the Product continues to be distributed and sold in California without the requisite warning	
		5

COMPLAINT

1 information.

2	23.	At all times relevant to this action, Defendants have knowingly and intentionally	
3	exposed the users of the Products to acrylamide without first giving a clear and reasonable		
4	warning to su	uch individuals.	
5	24.	As a proximate result of acts of Defendants as persons in the course of doing	
6	business with	nin the meaning of Health & Safety Code § 25249.11, individuals throughout the	
7	State of California, including the County of San Diego, have been exposed to acrylamide without		
8	a clear and reasonable warning. The individuals subject to the illegal exposures include normal		
9	and foreseeable users of the Products, as well as all other persons exposed to the Products.		
10			
11	FIRST CAUSE OF ACTION (Violations of Health and Safety Code § 25249.5, <i>et seq.</i>)		
12			
13	25.	Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,	
14	inclusive, as if specifically set forth herein.		
15	26.	Defendants are a person doing business within the meaning of Health & Safety	
16	Code § 25249.11.		
17	27.	Acrylamide is listed on the State of California as a chemical known to cause	
18	cancer.		
19	28.	Defendants have and continues to knowingly and intentionally expose individuals	
20	uvela in cast the Dreducts to the chamical complemide without first merviding a clean and reasonable		
21	warning to su	uch individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).	
22	29.	Continuing commission by Defendants of the acts alleged above will irreparably	
23	harm the citizens of the State of California, for which harm they have no plain, speedy, or		
24	adequate remedy at law.		
25			
26		PRAYER FOR RELIEF	
27	Wherefore, Plaintiff prays for the following relief:		
28	1. A preliminary and permanent injunction, pursuant to Health & Safety Code §		
-			
	1	6	

1	25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in	
2	concert or participating with Defendants, from distributing or selling the Products in California	
3	without first providing a clear and reasonable warning that consumers of the Products are exposed	
4	to acrylamide;	
5	2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling	
6	Defendants to identify and locate each individual who has purchased the Product and to provide a	
7	warning to such persons that consumption of the Product will expose the consumers to a chemical	
8	known to cause cancer.	
9	3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)	
10	against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;	
11	4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to	
12	California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the	
13	Court; and,	
14	5. Such other and further relief as may be just and proper.	
15		
16	DATED: September 15, 2021 LAW OFFICES OF GEORGE RIKOS	
17	anna Riber	
18	George Rikos	
19	Attorney for Plaintiff	
20		
21		
22		
23		
24		
25		
26		
27		
28		
	COMPLAINT	