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9 ENVIRONMENTAL HEALTH ADVOCATES, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 ENVIRONMENTAL HEALTH ADVOCATES,
13 INC.,

14 Plaintiff,

15 v.

16 NATURE'S PATH FOODS, INC., a Canadian
17 corporation, WHOLE FOODS MARKET
18 CALIFORNIA, INC., a California corporation,
19 AMAZON.COM, INC., a Delaware
20 corporation, and DOES 1 through 100,
21 inclusive,

22 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

03/16/2022 at 10:17:57 AM

By: Yolanda Copes, Deputy Clerk

Case No.: **22CV008458**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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 Que Pasa Yellow Corn Tortilla Chips (“Products”). Defendants know and intend that
7 customers 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.

1 13. Defendants have sufficient minimum contacts in the State of California or otherwise
2 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
3 be consistent with traditional notions of fair play and substantial justice.

4 **IV.**
5 **CAUSES OF ACTION**

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

8 14. Plaintiff incorporates by reference each and every allegation contained above.

9 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that
10 cause cancer, birth defects, and other reproductive harm.

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

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

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

21 19. Defendants knew or should have known that the Products contained acrylamide and
22 exposed individuals to acrylamide in the ways provided above. The Notice informed Defendants of the
23 presence of acrylamide in the Products. Likewise, media coverage concerning acrylamide and related
24 chemicals in consumer products provided constructive notice to Defendants.

25 20. Defendants' actions in this regard were deliberate and not accidental.

26 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
27 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
28 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

1 California of the health hazards associated with exposures to acrylamide contained in the Products.

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

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

7 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
8 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
9 appropriate pursuant to Health and Safety Code, section 25249.7(a).

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for judgment against Defendants as follows:

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

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

17 3. Reasonable attorney’s fees and costs of suit; and

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

19
20 Respectfully submitted:

21 Dated: March 16, 2022

ENTORNO LAW, LLP

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