

1 **GLICK LAW GROUP, PC**  
2 Noam Glick (SBN 251582)  
3 Kelsey McCarthy (SBN 305372)  
4 225 Broadway, Suite 2100  
5 San Diego, California 92101  
6 Telephone: (619) 382-3400  
7 Facsimile: (619) 615-2193  
8 Email: [noam@glicklawgroup.com](mailto:noam@glicklawgroup.com)  
9 Email: [kelsey@glicklawgroup.com](mailto:kelsey@glicklawgroup.com)

10 **NICHOLAS & TOMASEVIC, LLP**  
11 Craig M. Nicholas (SBN 178444)  
12 Alex M. Tomasevic (SBN 245598)  
13 225 Broadway, 19<sup>th</sup> Floor  
14 San Diego, California 92101  
15 Tel: (619) 325-0492  
16 Fax: (619) 325-0496

17 Attorneys for Plaintiff  
18 Kim Embry

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

21 KIM EMBRY, an individual

22 Plaintiff,

23 v.

24 GENERAL MILLS, INC., and DOES 1  
25 through 100, inclusive,

26 Defendants.

27 Case No.: **CGC-17-561519**

28 **COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

**ENDORSED  
FILED**  
*San Francisco County Superior Court*

SEP 25 2017

CLERK OF THE COURT  
BY: SANDRA L. SCHIRO  
Deputy Clerk

**BY FAX**  
ONE LEGAL LLC

**I.**  
**INTRODUCTION**

1  
2           1.       This Complaint is a representative action brought by Plaintiff in the public interest of  
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the  
4 presence of Acrylamide, (“Listed Chemical”) found in Nature Valley Crunchy Granola Bars Oats ‘n  
5 Honey manufactured, imported, sold, or distributed for sale in California by Defendants.

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

11           3.       California identified and listed Acrylamide as a chemical known to cause cancer on  
12 January 1, 1990, and listed as known to cause developmental/reproductive toxicity in February of 2011.

13           4.       Nature Valley Crunchy Granola Bars Oats ‘n Honey manufactured, imported, sold, or  
14 distributed in California contains prohibited levels of Acrylamide (“Products”).

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

18           6.       Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers  
19 in California before exposing them to Acrylamide in Products or other products containing Acrylamide  
20 pursuant to Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff  
21 also seeks civil penalties against Defendant for its violations of Proposition 65. (Cal. Health & Safety  
22 Code § 25249.7(b).)

**II.**  
**PARTIES**

23  
24           7.       Plaintiff is a citizen of the State of California dedicated to protecting the health of  
25 California citizens through the elimination or reduction of toxic exposure from consumer products. She  
26 brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.

27           8.       GENERAL MILLS, INC., (“General Mills” or “Defendant”) is a corporation organized  
28 and existing under the laws of Minneapolis, Minnesota. Defendant is registered to do and does business

1 in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11.  
2 Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County.

3 9. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.  
4 Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis  
5 alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein  
6 alleged. When ascertained, their true names shall be reflected in an amended complaint.

7  
8 **III.**  
**VENUE AND JURISDICTION**

9 10. California Constitution Article VI, Section 10 grants the Superior Court original  
10 jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code  
11 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court  
12 has jurisdiction.

13 11. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil  
14 Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
15 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

16 12. Defendant have sufficient minimum contacts in the State of California or otherwise  
17 purposefully avails themselves of the California market. Exercising jurisdiction over Defendant would  
18 be consistent with traditional notions of fair play and substantial justice.

19 **IV.**  
**CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**  
21 **(Violation of Proposition 65 – Against all Defendants)**

22 13. Plaintiff incorporates by reference each and every allegation contained above.

23 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
24 cause cancer, birth defects, and other reproductive harm.

25 15. Defendants manufactured, imported, sold, and/or distributed Products containing Listed  
26 Chemical in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed  
27 and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue  
28 to occur into the future.

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

4           17.     The presence of Listed Chemical in Products exposes individuals to the Listed  
5 Chemicals through ingestion.

6           18.     Defendants knew or should have known that the Products contained Listed Chemical  
7 and exposed individuals to Listed Chemical in the ways provided above. The Notice informed  
8 Defendants of the presence of Listed Chemical in the Products. Likewise, media coverage concerning  
9 Listed Chemical and related chemicals in consumer products, provided constructive notice to  
10 Defendants. By manufacturing, importing, distributing, and/or selling Products in California,  
11 Defendants should know that the Products contain Listed Chemical and that individuals who come into  
12 contact with Products will be exposed to Listed Chemicals.

13           19.     Defendants' actions in this regard were deliberate and not accidental.

14           20.     On May 3, 2017 Plaintiff provided Defendants a 60-Day Notice of Violation ("Notice")  
15 as required by and in compliance with Proposition 65. The Notice was provided to the various required  
16 public enforcement agencies and contained a certificate of merit. The Notice alleged that Defendant  
17 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards  
18 associated with exposures to Listed Chemical contained in the Products.

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

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

24           23.     Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
25 of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also  
26 appropriate pursuant to Health & Safety Code Section 25249.7(a).

27     ///

28     ///

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

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

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10 Dated: September 25, 2017

**GLICK LAW GROUP, PC**

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13 By: 

Noam Glick  
Kelsey McCarthy

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15 Attorneys for Plaintiff

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