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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

17 KIM EMBRY, an individual  
 18 Plaintiff,  
 19 v.  
 20 THE KROGER COMPANY, an Ohio  
 21 corporation; PINNACLE FOODS GROUP,  
 22 LLC, a Delaware corporation; BRUEGGER'S  
 23 ENTERPRISES, INC. a Delaware corporation,  
 24 and DOES 1 through 100, inclusive,  
 25 Defendants.

Case No.:  
**COMPLAINT FOR CIVIL PENALTIES  
 AND INJUNCTIVE RELIEF**  
 (Health & Safety Code § 25249.6 et seq.)

**FILED BY FAX**  
 ALAMEDA COUNTY  
 June 08, 2018  
 CLERK OF  
 THE SUPERIOR COURT  
 By Cheryl Clark, Deputy  
 CASE NUMBER:  
**RG18908172**

**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 (“the People”). Plaintiff seeks to remedy Defendants’ failure to  
4 inform the People of exposure to Acrylamide, a known carcinogen. Defendants expose consumers to  
5 Acrylamide by manufacturing, importing, selling, and/or distributing bagels that consumers toast or grill  
6 to a golden brown (“Products”). Defendants both instruct customers to, and reasonably anticipate that  
7 customers will, toast and/or grill their bagels in this fashion. In other words, Defendants know and  
8 intend that customers will ingest Products containing Acrylamide.

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

14           3.       California identified and listed Acrylamide as a chemical known to cause cancer as early  
15 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February  
16 of 2011.

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

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

**II.**  
**PARTIES**

24  
25  
26           6.       Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the  
27 health of California citizens through the elimination or reduction of toxic exposure from consumer  
28

1 products. She brings this action in the public interest pursuant to Health and Safety Code, section  
2 25249.7.

3 7. Defendant THE KROGER COMPANY, an Ohio corporation (“Kroger”), is a  
4 corporation organized and existing under the laws of Ohio. Defendant is registered to do business in  
5 California, and does business in County of Alameda, within the meaning of Health and Safety Code,  
6 section 25249.11. Kroger manufactures, imports, sells, or distributes Products in California and  
7 Alameda County, including, for example Simple Truth Organic Plain Bagels 18 oz. and Lender’s Bagel  
8 Shop Bagels Plain 17.1 oz.

9 8. Defendant PINNACLE FOODS GROUP, LLC, a Delaware corporation (“Pinnacle”),  
10 is a corporation organized and existing under the laws of Delaware. Defendant is registered to do  
11 business in California, and does business in County of Alameda, within the meaning of Health and  
12 Safety Code, section 25249.11. Pinnacle manufactures, imports, sells, or distributes Products in  
13 California and Alameda County, including, for example, Lender’s Bagel Shop Bagels Plain 17.1 oz.

14 9. Defendant BRUEGGER’S ENTERPRISES, INC., a Delaware corporation  
15 (“Bruegger’s), is a corporation organized and existing under the laws of Delaware. Defendant does  
16 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.  
17 Bruegger’s manufactures, imports, sells, or distributes Products in California and Alameda County,  
18 including, for example, Bruegger’s Bagels Plain Bagel.

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

23 **III.**  
24 **VENUE AND JURISDICTION**

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



