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15 Attorneys for Plaintiff
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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

19 KIM EMBRY, an individual

20 Plaintiff,

21 v.

22 WESTERN BAGEL BAKING
23 CORPORATION, and DOES 1 through 100,
inclusive,

24 Defendants.
25
26
27
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Case No.:

RG17884528

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 4 2017

CLERK OF THE SUPERIOR COURT

By TANIA PIERCE Deputy

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 Western Bagel Baking Corporation’s (“Western
5 Bagel” or “Defendant”) bagel products manufactured, imported, sold, or distributed for sale in
6 California by Defendant.

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

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

14 4. Western Bagel’s bagels manufactured, imported, sold, or distributed in California
15 contains prohibited levels of Acrylamide when toasted and/or grilled (“Products”).

16 5. 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 6. Plaintiff seeks injunctive relief compelling Defendant to cease exposing consumers in
20 California to Acrylamide through its Products and/or sufficiently warn consumers in California before
21 exposing them to Acrylamide in Products pursuant to Proposition 65 and related Regulations. (Cal.
22 Health & Safety Code § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for its
23 violations of Proposition 65, attorney’s fees and costs. (Cal. Health & Safety Code § 25249.7.)

II.
PARTIES

24
25 7. Plaintiff is a citizen of the State of California dedicated to protecting the health of
26 California citizens through the elimination or reduction of toxic exposure from consumer products. She
27 brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.
28

1 8. WESTERN BAGEL BAKING CORPORATION, (“Western Bagel” or “Defendant”) is
2 a corporation organized and existing under the laws of California. Defendant is registered to do and
3 does business in California, County of Alameda, within the meaning of Cal. Health & Safety Code §
4 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and Alameda
5 County.

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

10 **III.**
VENUE AND JURISDICTION

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

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

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

21 **IV.**
CAUSES OF ACTION

22 **FIRST CAUSE OF ACTION**
23 **(Violation of Proposition 65 – Against Defendant)**

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

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

27 15. Defendant manufactured, imported, sold, and/or distributed Products containing Listed
28 Chemical in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed

1 and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue
2 to occur into the future.

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

6 17. The presence of Listed Chemical in Products exposes individuals to the Listed Chemical
7 through ingestion.

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

15 19. Defendant's actions in this regard were deliberate and not accidental.

16 20. On July 21, 2017 Plaintiff provided Defendant a 60-Day Notice of Violation ("Notice")
17 as required by and in compliance with Proposition 65. The Notice was provided to the various required
18 public enforcement agencies and contained a certificate of merit. The Notice alleged that Defendant
19 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
20 associated with exposures to Listed Chemical contained in the Products.

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

23 22. Individuals exposed to Listed Chemical contained in the Products through 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 23. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
27 Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also
28 appropriate pursuant to Health & Safety Code Section 25249.7(a).

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 Defendant 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: December 1, 2017

GLICK LAW GROUP, PC

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13 By:



Noam Glick
Kathryn Turner-Arsenault

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15 Attorneys for Plaintiff

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