

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 BIMBO BAKERIES USA, INC. a Delaware  
25 corporation, TARGET CORPORATION, a  
26 Minnesota corporation, THE KROGER  
27 COMPANY dba RALPH'S, an Ohio  
28 corporation, THE KROGER COMPANY an  
Ohio corporation, FLOWER BAKERIES,  
LLC, a Georgia corporation, CALIFORNIA  
BAKING COMPANY, a California  
corporation, SMART & FINAL STORES,  
INC., a Delaware corporation, HOSTESS  
BRANDS, LLC, a Delaware corporation,  
WALGREENS COMPANY, an Illinois  
corporation, AMERIFOODS TRADING CO.,  
a Florida corporation, and DOES 1 through  
100, inclusive,

Defendants.

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

**SEP 26 2017**

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

Case No.: **CGC-17-561535**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**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 Oroweat Country White Bread 24oz; Market  
5 Pantry White Enriched Round Top Bread; Psst Enriched White Bread; Home Pride Butter Top White  
6 Bread 20 oz; Wonder Calcium Fortified Bread 20 oz; California Baking Co. Cholesterol Free White  
7 Bread; Hostess Classic White 20oz; and First Street Bakery White Enriched Sandwich Bread;  
8 manufactured, imported, sold, or distributed for sale in California by Defendants.

9           2.       Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California  
10 Health & 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. . . .” (Cal. 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 known to cause developmental/reproductive toxicity in February of 2011

16           4.       Oroweat Country White Bread 24oz; Market Pantry White Enriched Round Top Bread;  
17 Psst Enriched White Bread; Home Pride Butter Top White Bread 20 oz; Wonder Calcium Fortified  
18 Bread 20 oz; California Baking Co. Cholesterol Free White Bread; Hostess Classic White 20oz; and  
19 First Street Bakery White Enriched Sandwich Bread manufactured, imported, sold, or distributed in  
20 California contain prohibited levels of Acrylamide (“Products”).

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

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

**II.**

**PARTIES**

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

8. Defendant BIMBO BAKERIES USA, INC. (“Bimbo” or “Defendant”) is a corporation organized and existing under the laws of Delaware. Defendant is registered to do and does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County.

9. Defendant TARGET CORPORATION is a corporation organized and existing under the laws of Minnesota. Defendant is registered to do and does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County, and specifically, the “Market Pantry Brand” bread products.

10. Defendant THE KROGER COMPANY dba RALPH’S is a corporation organized and existing under the laws of Ohio. Defendant is registered to do and does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County. (The Kroger Company and Ralph’s are collectively referred to as “Defendants.”)

11. Defendant THE KROGER COMPANY is a corporation organized and existing under the laws of Ohio. Defendant is registered to do and does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County. (The Kroger Company and Ralph’s are collectively referred to as “Defendants.”)

12. Defendant FLOWER BAKERIES, LLC (“Flower Bakeries” or “Defendant”) is a corporation organized and existing under the laws of Georgia. Defendant is registered to do and does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County.

1           13. Defendant CALIFORNIA BAKING COMPANY (“California Baking Co.” or  
2 “Defendant”) is a corporation organized and existing under the laws of California, Defendant is  
3 registered to do and does business in California, County of San Francisco, within the meaning of Cal.  
4 Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in  
5 California and San Francisco County.

6           14. Defendant SMART & FINAL STORES, INC. (“Smart & Final” or “Defendant”) is a  
7 corporation organized and existing under the laws of Delaware. Defendant is registered to do and does  
8 business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code §  
9 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San  
10 Francisco County.

11           15. Defendant HOSTESS BRANDS, LCC (“Hostess” or “Defendant”) is a corporation  
12 organized and existing under the laws of Delaware. Defendant is registered to do and does business in  
13 California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11.  
14 Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County.

15           16. Defendant WALGREENS COMPANY (“Walgreens” or “Defendant”) is a corporation  
16 organized and existing under the laws of Illinois. Defendant is registered to do and does business in  
17 California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11.  
18 Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County.

19           17. Defendant AMERIFOODS TRADING CO. (“Amerifoods” or “Defendant”) is a  
20 corporation organized and existing under the laws of Florida. Defendant is registered to do and does  
21 business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code §  
22 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San  
23 Francisco County.

24           18. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.  
25 Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis  
26 alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein  
27 alleged. When ascertained, their true names shall be reflected in an amended complaint.  
28

19. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

### III. VENUE AND JURISDICTION

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

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

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

#### IV. CAUSES OF ACTION

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

23. Plaintiff incorporates by reference each and every allegation contained above.

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

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

1           26.     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           27.     The presence of Listed Chemical in Products exposes individuals to the Listed  
5 Chemicals through direct ingestion.

6           28.     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           29.     Defendants' actions in this regard were deliberate and not accidental.

14           30.     On February 27, 2017 Plaintiff provided TARGET CORPORATION a 60-Day Notice  
15 of Violation ("Notice") as required by and in compliance with Proposition 65. The Notice was provided  
16 to the various required public enforcement agencies and contained a certificate of merit. The Notice  
17 alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California  
18 of the health hazards associated with exposures to Listed Chemical contained in the Products.

19           31.     On May 2, 2017 Plaintiff provided THE KROGER COMPANY dba RALPH'S and  
20 THE KROGER COMPANY a 60-Day Notice of Violation ("Notice") as required by and in compliance  
21 with Proposition 65. The Notice was provided to the various required public enforcement agencies and  
22 contained a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing  
23 to sufficiently warn consumers in California of the health hazards associated with exposures to Listed  
24 Chemical contained in the Products.

25           32.     On June 2, 2017 Plaintiff provided THE KROGER COMPANY dba RALPH'S and  
26 FLOWER BAKERIES, LLC a 60-Day Notice of Violation ("Notice") as required by and in compliance  
27 with Proposition 65. The Notice was provided to the various required public enforcement agencies and  
28 contained a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing

1 to sufficiently warn consumers in California of the health hazards associated with exposures to Listed  
2 Chemical contained in the Products.

3 33. On June 27, 2017 Plaintiff provided CALIFORNIA BAKING COMPANY and  
4 SMART & FINAL STORES, INC. a 60-Day Notice of Violation (“Notice”) as required by and in  
5 compliance with Proposition 65. The Notice was provided to the various required public enforcement  
6 agencies and contained a certificate of merit. The Notice alleged that Defendant violated Proposition  
7 65 by failing to sufficiently warn consumers in California of the health hazards associated with  
8 exposures to Listed Chemical contained in the Products.

9 34. On June 28, 2017 Plaintiff provided HOSTESS BRANDS, LLC and WALGREENS  
10 COMPANY a 60-Day Notice of Violation (“Notice”) as required by and in compliance with  
11 Proposition 65. The Notice was provided to the various required public enforcement agencies and  
12 contained a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing  
13 to sufficiently warn consumers in California of the health hazards associated with exposures to Listed  
14 Chemical contained in the Products.

15 35. On July 25, 2017 Plaintiff provided BIMBO BAKERIES USA, INC. and THE  
16 KROGER COMPANY dba RALPH’S a 60-Day Notice of Violation (“Notice”) as required by and in  
17 compliance with Proposition 65. The Notice was provided to the various required public enforcement  
18 agencies and contained a certificate of merit. The Notice alleged that Defendant violated Proposition  
19 65 by failing to sufficiently warn consumers in California of the health hazards associated with  
20 exposures to Listed Chemical contained in the Products.

21 36. On September 20, 2017 Plaintiff provided AMERIFOODS TRADING CO. and  
22 SMART & FINAL STORES, INC a 60-Day Notice of Violation (“Notice”) as required by and in  
23 compliance with Proposition 65. The Notice was provided to the various required public enforcement  
24 agencies and contained a certificate of merit. The Notice alleged that Defendant violated Proposition  
25 65 by failing to sufficiently warn consumers in California of the health hazards associated with  
26 exposures to Listed Chemical contained in the Products.

27 37. The appropriate public enforcement agencies provided with the Notice failed to  
28 commence and diligently prosecute a cause of action against Defendants.

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

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

## PRAAYER FOR RELIEF

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

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

Dated: September 25, 2017

**GLICK LAW GROUP, PC**

By:

Noam Glick  
Kelsey McCarthy

Attorneys for Plaintiff