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I. INTRODUCTION

1. This Complaint is a representative action brought by Plaintiff Kim Embry in the public interest of the citizens of the State of California (“the People”). Plaintiff seeks to remedy Defendants’ failure to inform the People of exposure to Acrylamide, a known carcinogen. Defendants expose consumers to Acrylamide by manufacturing, importing, selling, and/or distributing wafers in California containing Acrylamide (“Products”). Defendants know and intend that customers will ingest Products.

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

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

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

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

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II. PARTIES

6. 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 Health and Safety Code, section 25249.7.

7. Defendant A. LOACKER USA, INC., a Delaware corporation (“Loacker”), is a corporation organized and existing under the laws of Delaware. Defendant is registered to do business

1 in California, and does business in the County of Alameda, within the meaning of Health and Safety
2 Code, section 25249.11. Loacker manufactures, imports, sells, or distributes Products in California and
3 Alameda County, including, for example Quadratini Almonds Bite Size Wafer Cookies.

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

8 **III. VENUE AND JURISDICTION**

9 9. 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 and 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 10. Venue is proper in Alameda 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. Defendant conducted and continues to conduct business in this County as it relates to Products.

16 11. Defendant has sufficient minimum contacts in the State of California or otherwise
17 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
18 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 12. Plaintiff incorporates by reference each and every allegation contained above.

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

25 14. Defendant manufactured, imported, sold, and/or distributed Products containing
26 Acrylamide in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and
27 believes such violations have continued after receipt of the Notices (defined *infra*) and will continue to
28 occur into the future.

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

4 16. Products expose individuals to Acrylamide through direct ingestion. This exposure is a
5 natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As
6 such, Defendant intend that consumers will ingest Products, exposing them to Acrylamide.

7 17. Defendant knew or should have known that the Products contained Acrylamide and
8 exposed individuals to Acrylamide in the ways provided above. The Notice informed Defendant of the
9 presence of Acrylamide in the Products. Likewise, media coverage concerning Acrylamide and related
10 chemicals in consumer products provided constructive notice to Defendant along with regulations and
11 attention given to the chemical outside of California where Defendant also operates.

12 18. Defendant's actions in this regard were deliberate and not accidental.

13 19. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff issued a
14 60-Day Notice of Violation ("Notice(s)") as required by and in compliance with Proposition 65.
15 Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate
16 of merit. The Notices alleged that Defendants violated Proposition 65 by failing to sufficiently warn
17 consumers in California of the health hazards associated with exposures to Acrylamide contained in the
18 Products and specifically identified Quadratini Almonds Bite Size Wafer Cookies manufactured and
19 sold by Defendant.

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

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

25 22. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
26 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
27 appropriate pursuant to Health and Safety Code, section 25249.7(a).

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendant 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 and reasonable
6 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.

9
10 Respectfully submitted:

11 Dated: January 4, 2019

NICHOLAS & TOMASEVIC, LLP

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13
14 By: 
15 Craig M. Nicholas
Shaun Markley

16 **GLICK LAW GROUP, P.C.**
17 Noam Glick

18 Attorneys for Plaintiff
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