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**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 08 2018

CLERK OF THE SUPERIOR COURT
By TANIA PIERCE
Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 KIM EMBRY, an individual

13 Plaintiff,

14 v.

15 VAN'S INTERNATIONAL FOODS, INC., a
16 California corporation, WAL-MART STORES,
17 INC., a California corporation, MONDELEZ
18 GLOBAL LLC, a Delaware corporation,
19 JET.COM, INC., a Delaware corporation, BETTER
20 LIVING BRANDS, LLC, a California corporation,
21 VONS COMPANIES, INC. a Michigan
22 corporation, ALBERTSONS COMPANIES, LLC, a
23 Delaware corporation and DOES 1 through 100,
24 inclusive,

25 Defendants.

Case No.: *R918887777*

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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I.
INTRODUCTION

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2 1. This Complaint is a representative action brought by Plaintiff Kim Embry in the public
3 interest of the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be
4 informed of the presence of Acrylamide (“Listed Chemical”) found in Cranberry Almond Chewy
5 Baked Whole Grain Snack Bars, Belvita Cinnamon Brown Sugar Breakfast Biscuits and Signature
6 Kitchens Crunchy Granola Bars Oats & Honey, all of which are manufactured, imported, sold, or
7 distributed for sale in California by Defendants.

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

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

15 4. Cranberry Almond Chewy Baked Whole Grain Snack Bars, Belvita Cinnamon Brown
16 Sugar Breakfast Biscuits and Signature Kitchens Crunchy Granola Bars Oats & Honey (collectively
17 “Products”) are manufactured, imported, sold, or distributed in California and contain prohibited
18 levels of Listed Chemical.

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

22 6. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
23 in California before exposing them to Listed Chemical in Products, or other products containing
24 Listed Chemical, pursuant to Proposition 65 and related Regulations. (Cal. Health & Safety Code §
25 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for their violations of Proposition
26 65 along with attorney’s fees and costs. (Cal. Health & Safety Code §§ 25249.7(b) and (j).)

II.
PARTIES

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3 7. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting
4 the health of California citizens through the elimination or reduction of toxic exposure from consumer
5 products. She brings this action in the public interest pursuant to Cal. Health & Safety Code §
6 25249.7.

7 8. Defendant WAL-MART STORES, INC. (“Walmart”) is a corporation organized and
8 existing under the laws of California. Defendant is registered to do business in California, and does
9 business in the County of Alameda, and fits the definition of “person” as set forth at Cal. Health &
10 Safety Code § 25249.11. Walmart manufactures, imports, sells, or distributes Products in California
11 and Alameda County, including, for example, Cranberry Almond Chewy Baked Whole Grains Whole
12 Grain Snack Bars.

13 9. Defendant VAN’S INTERNATIONAL FOODS, INC. (“Van’s”) is a corporation
14 organized and existing under the laws of California. Defendant is registered to do business in
15 California, and does business in the County of Alameda, and fits the definition of “person” as set forth
16 at Cal. Health & Safety Code § 25249.11. Van’s International manufactures, imports, sells, or
17 distributes Products in California and Alameda County, including, for example, Cranberry Almond
18 Chewy Baked Whole Grains Whole Grain Snack Bars.

19 10. Defendant VONS COMPANIES, INC. (“Vons”) is a corporation organized and
20 existing under the laws of Michigan. Defendant is registered to do business in California, and does
21 business in the County of Alameda, and fits the definition of “person” as set forth at Cal. Health &
22 Safety Code § 25249.11. Vons manufactures, imports, sells, or distributes Products in California and
23 Alameda County, including, for example, Signature Kitchens Crunchy Granola Bars Oats & Honey
24 and Quaker Breakfast Flats Banana Honey Nut.

25 11. Defendant BETTER LIVING BRANDS, LLC (“Better Living”) is a corporation
26 organized and existing under the laws of California. Defendant is registered to do business in
27 California, and does business in the County of Alameda, and fits the definition of “person” as set forth
28 at Cal. Health & Safety Code § 25249.11. BETTER LIVING BRANDS, LLC manufactures, imports,

1 sells, or distributes Products in California and Alameda County, including, for example, Signature
2 Kitchens Crunchy Granola Bars Oats & Honey.

3 12. Defendant MONDELEZ GLOBAL, LLC (“Mondelez”) is a corporation organized and
4 existing under the laws of Delaware. Defendant is registered to do business in California, and does
5 business in the County of Alameda, and fits the definition of “person” as set forth at Cal. Health &
6 Safety Code § 25249.11. MONDELEZ GLOBAL, LLC manufactures, imports, sells, or distributes
7 Products in California and Alameda County, including, for example, Belvita Cinnamon Brown Sugar
8 Breakfast Biscuits.

9 13. Defendant JET.COM is a corporation organized and existing under the laws of
10 Delaware. Defendant is registered to do business in California, and does business in the County of
11 Alameda, and fits the definition of “person” as set forth at Cal. Health & Safety Code § 25249.11.
12 JET.COM manufactures, imports, sells, or distributes Products in California and Alameda County,
13 including, for example, Belvita Cinnamon Brown Sugar Breakfast Biscuits.

14 14. Defendant ALBERTSONS COMPANIES, LLC (“Albertsons”) is a corporation
15 organized and existing under the laws of Delaware. Defendant is registered to do business in
16 California, and does business in the County of Alameda, and fits the definition of “person” as set forth
17 at of Cal. Health & Safety Code § 25249.11. Albertsons manufactures, imports, sells, or distributes
18 Products in California and Alameda County, including, for example, Signature Kitchens Crunchy
19 Granola Bars Oats & Honey. (Quaker Oats, Target, Ralph’s, Walmart, Vans, Vons, Nature’s Path,
20 Better Living, Kellogg, Mondelez, Jet.Com, and Albertson’s are collectively referred to herein as
21 “Defendants.”)

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

26 16. At all times mentioned, Defendants were the agents, alter egos, servants, joint
27 venturers, joint employers, or employees for each other. Defendants acted with the consent of the
28

1 other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or
2 employment. All conduct was ratified by Defendants, and each of them.

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4 **III.**
VENUE AND JURISDICTION

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

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

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

16 **IV.**
FIRST CAUSE OF ACTION

17 **(Violation of Proposition 65 – Against all Defendants)**

18 20. Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

1 24. Products expose individuals to the Listed Chemical through direct ingestion. This
2 exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of
3 commerce. Defendants intend that consumers will ingest Products, exposing them to the Listed
4 Chemical.

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

12 26. Defendants' actions in this regard were deliberate and not accidental.

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

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

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

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

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10 Dated: January 3, 2018

GLICK LAW GROUP, PC

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12 By:



Noam Glick
Kathryn Turner-Arsenault
Attorneys for Plaintiff