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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 BAUDUCCO FOODS, INC., a Florida
23 corporation, TARGET CORPORATION, a
California corporation, and DOES 1 through
24 100, inclusive,

25 Defendants.
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**ENDORSED
FILED
ALAMEDA COUNTY
DEC - 8 2017**

CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

Case No.:

RE 17885287

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

- VIOLATION OF PROPOSITION 65

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

I.

INTRODUCTION

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3 1. This Complaint is a representative action brought by Plaintiff in the public interest of
4 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the
5 presence of acrylamide (“Listed Chemical”) found in Bauducco® Wafer-Vanillas (“Product”) that are
6 manufactured, imported, sold, or distributed for sale in California by Defendants.

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

12 3. On January 1, 1990, California identified and listed acrylamide as a chemical known to
13 cause cancer. In February 2011, California listed acrylamide as a chemical known to cause
14 developmental/reproductive toxicity.

15 4. Defendants BAUDUCCO FOODS, INC., and TARGET CORPORATION
16 manufactured, imported, sold, or distributed the Product, which contains prohibited levels of
17 acrylamide, in California.

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

21 6. Pursuant to Proposition 65 and related regulations (Cal. *Health & Saf. Code* §
22 25249.7(a)), Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers in
23 California before exposing them to acrylamide in Product or other products containing acrylamide.
24 Plaintiff also seeks civil penalties against Defendants for their violations of Proposition 65. (Cal. *Health*
25 *& Saf. Code* § 25249.7(b).)
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II.

PARTIES

7. Plaintiff 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 & Saf. Code* section 25249.7.

8. Bauducco Foods, Inc., (“Bauducco Foods” or, collectively with Target Corporation, “Defendants”) is a corporation organized and existing under the laws of the State of Florida. Bauducco Foods is registered to do and does business in California, County of Alameda, within the meaning of California *Health & Safety Code* section 25249.11. Defendant manufactures, imports, sells, and/or distributes Product in Alameda County and California.

9. Target Corporation, (“Target” or, collectively with Bauducco Foods, “Defendants”) is a corporation organized and existing under the laws of the State of California. Target is registered to do and does business in California, County of Alameda, within the meaning of California *Health & Safety Code* section 25249.11. Defendant manufactures, imports, sells, or distributes Product in Alameda County and California.

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

III.

VENUE AND JURISDICTION

11. 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 Superior Court has jurisdiction.

12. Pursuant to *Code of Civil Procedure* sections 394, 395, and 395.5, venue is proper in Alameda County Superior Court. Wrongful conduct occurred and continues to occur in this County. Defendants conducted and continue to conduct business in this County as it relates to Product.

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

4 **IV.**

5 **FIRST CAUSE OF ACTION**

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

7 14. Plaintiff incorporates by reference each and every allegation contained above.

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

10 16. Defendants manufactured, imported, sold, and/or distributed Product, which contains a
11 Listed Chemical in violation of California *Health & Safety Code* sections 25249.6, *et seq.* Plaintiff is
12 informed and believes such violations have continued after receipt of the Notice (defined *infra*) and
13 will continue to occur into the future.

14 17. In manufacturing, importing, selling, and/or distributing Product, Defendants failed to
15 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
16 to Listed Chemical through reasonably foreseeable use of the Product.

17 18. The presence of Listed Chemical in Product exposes individuals to the Listed Chemical
18 through ingestion.

19 19. Defendants knew or should have known that the Product contained Listed Chemical and
20 exposed individuals to Listed Chemical in the way provided above. The Notice informed Defendants
21 of the presence of Listed Chemical in the Products. Likewise, media coverage concerning Listed
22 Chemical and related chemicals in consumer products, provided constructive notice to Defendants. By
23 manufacturing, importing, distributing, and/or selling Product in California, Defendants should know
24 that the Product contains Listed Chemical and that individuals who come into contact with Product will
25 be exposed to Listed Chemical.

26 20. Defendants’ actions in this regard were deliberate and not accidental.

27 21. On August 25, 2017, Plaintiff provided Defendants a 60-Day Notice of Violation
28 (“Notice”) as required by, and in compliance with, Proposition 65. The Notice was provided to the

1 various required public enforcement agencies and contained a certificate of merit. The Notice alleged
2 that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the
3 health hazards associated with exposures to Listed Chemical contained in the Products.

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

6 23. Individuals who have been exposed through ingestion resulting from reasonably
7 foreseeable use of the Product to Listed Chemical contained in the Product have suffered and continue
8 to suffer irreparable harm. There is no other plain, speedy, or adequate remedy.

9 24. Pursuant to *Health & Safety Code* section 25249.7(b), Defendants are liable for a
10 maximum civil penalty of \$2,500 per day for each violation of Proposition 65. Pursuant to *Health &*
11 *Safety Code* section 25249.7(a), injunctive relief is also appropriate


12 **PRAYER FOR RELIEF**

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

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

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21 Dated: December 8, 2017

GLICK LAW GROUP, PC

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24 By: 
25 Noam Glick
Kathryn Turner-Arsenault

26 Attorneys for Plaintiff
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