To: SUPERIOR COURT OF THE STATE O Page 6 of 10 2018-06-08 21:13:13 (GMT)

16193741930 From: Noam Glick

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11 12 13	225 Broadway, Suite 2100 San Diego, California 92101 Tel: (619) 382-3400 Fax: (619) 615-2193 Email: noam@glicklawgroup.com	
14	Attorneys for Plaintiff Kim Embry	
15	SUPERIOR COURT OF	THE STATE OF CALIFORNIA
16	IN AND FOR THE	COUNTY OF ALAMEDA
17		
18	KIM EMBRY, an individual	Case No.:
19 20	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
21	BLUE DIAMOND GROWERS, a California corporation and DOES 1 through 100, inclusive,	(Health & Safety Code § 25249.6 et seq.)
22	Defendants.	
23	Detendants.	
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I. INTRODUCTION

This Complaint is a representative action brought by Plaintiff 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 almonds that consumers ingest
 ("Products"). Defendants both instruct customers to, and reasonably anticipate that customers will,
 ingest their almonds. In other words, Defendants know and intend that customers will ingest a Product
 that contains Acrylamide.

Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, 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 known to cause developmental/reproductive toxicity in February of 2011.

17 4. Defendants failed to sufficiently warn consumers and individuals in California about
18 potential exposure to Acrylamide in connection with Defendants' manufacture, import, sale, or
19 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. (Cal. 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. (Cal. Health & Safety Code § 25249.7(b).)

II. PARTIES

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

7. Defendant BLUE DIAMOND GROWERS, a California corporation ("Blue Diamond")
 is a corporation organized and existing under the laws of California. Defendant is registered to do
 business in California, and does business in County of Alameda, within the meaning of Cal. Health &
 Safety Code § 25249.11. Blue Diamond manufactures, imports, sells, or distributes Products in
 California and Alameda County, including, for example Blue Diamond Almonds (Roasted Salted).

8. 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.

9. 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

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

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

12. 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.

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	IV.	
1	CAUSES OF ACTION	
2	FIRST CAUSE OF ACTION (Violation of Proposition 65 – Against all Defendants)	
3	(violation of rioposition 05 – Against an Defendants)	
4	13. Plaintiff incorporates by reference each and every allegation contained above.	
5	14. Proposition 65 mandates that citizens be informed about exposures to chemicals that	
6	cause cancer, birth defects, and other reproductive harm.	
7	15. Defendants manufactured, imported, sold, and/or distributed Products containing	
8	Acrylamide in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is	
9	informed and believes such violations have continued after receipt of the Notices (defined infra) and	
10	will continue to occur into the future.	
11	16. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to	
12	provide a clear and reasonable warning to consumers and individuals in California who may be exposed	
13	to Acrylamide through reasonably foreseeable use of the Products.	
14	17. Products expose individuals to Acrylamide through direct ingestion. This exposure is a	
15	natural and foreseeable consequence of Defendants' placing Products into the stream of commerce. As	
16	such, Defendants intend that consumers will ingest Products, exposing them to Acrylamide.	
17	18. Defendants knew or should have known that the Products contained Acrylamide and	
18	exposed individuals to Acrylamide in the ways provided above. The Notice informed Defendants of	
19	the presence of Acrylamide in the Products. Likewise, media coverage concerning Acrylamide and	
20	related chemicals in consumer products provided constructive notice to Defendants.	
21	19. Defendants' actions in this regard were deliberate and not accidental.	
22	20. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff issued a	
23	60-Day Notice of Violation ("Notice(s)") as required by and in compliance with Proposition 65.	
24	Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate	
25	of merit. The Notices alleged that Defendants violated Proposition 65 by failing to sufficiently warn	
26	consumers in California of the health hazards associated with exposures to Acrylamide contained in the	
27	Products.	
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1	21. The appropriate public enforcement agencies provided with the Notices failed to	
2	commence and diligently prosecute a cause of action against Defendants.	
3	22. Individuals exposed to Acrylamides contained in the Products through direct ingestion	
4	resulting from reasonably foreseeable use of the Products have suffered and continue to suffer	
5	irreparable harm. There is no other plain, speedy, or adequate remedy at law.	
6	23. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation	
7	of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also	
8	appropriate pursuant to Health & Safety Code Section 25249.7(a).	
9	PRAYER FOR RELIEF	
10	Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:	
11	1. Civil penalties in the amount of \$2,500 per day for each violation;	
12	2. A preliminary and permanent injunction against Defendants from manufacturing,	
13	importing, selling, and/or distributing Products in California without providing a clear and reasonable	
14	warning as required by Proposition 65 and related Regulations;	
15	3. Reasonable attorney's fees and costs of suit; and	
16	4. Such other and further relief as may be just and proper.	
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18	Dated: June 8, 2018	
19	GLICK LAW GROUP, PC	
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21	By Noan Slich	
22	Noam Glick	
23	Attorney for Plaintiff	
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