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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 17 **IN AND FOR THE COUNTY OF ALAMEDA**

18 KIM EMBRY, an individual
 19 Plaintiff,
 20 v.
 21 CVS PHARMACY, INC, a
 22 Rhode Island corporation, and DOES 1 through
 100, inclusive,
 23 Defendants.
 24

Case No.:
**COMPLAINT FOR CIVIL PENALTIES
 AND INJUNCTIVE RELIEF**
 (Cal. Health & Safety Code § 25249.6 et seq.)

FILED BY FAX

ALAMEDA COUNTY

April 30, 2019

CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:

HG19017116

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 (“The People”). Plaintiff seeks to remedy Defendants’ failure to
4 inform the People of exposure to Acrylamide, a known carcinogen. Defendants expose consumers to
5 Acrylamide by manufacturing, importing, selling, and/or distributing almonds (“Products”).

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

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

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

16 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
17 in California before exposing them to Acrylamide in Products or other products containing Acrylamide
18 pursuant to Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff
19 also seeks civil penalties against Defendant for its violations of Proposition 65. (Cal. Health & Safety
20 Code § 25249.7(b) and (j).)

II.
PARTIES

21
22
23 6. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the
24 health of California citizens through the elimination or reduction of toxic exposure from consumer
25 products. She brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.

26 7. Defendant CVS Pharmacy, Inc., a Rhode Island corporation (“CVS”) is a corporation
27 organized and existing under the laws of Rhode Island. CVS is registered to do and does business in
28 California, County of Alameda, and fits the definition of “person” as set forth at Cal. Health & Safety

1 Code § 25249.11. CVS's manufactures, imports, sells, or distributes Products in California and
2 Alameda County including, Gold Emblem Roasted Almonds.

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

7 **III.**
VENUE AND JURISDICTION

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

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

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

18 **IV.**
CAUSES OF ACTION

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

21 12. Plaintiff incorporates by reference each and every allegation contained above.

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

24 14. Defendants manufactured, imported, sold, and/or distributed Products containing Listed
25 Chemical in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed
26 and believes such violations have continued after receipt of Notice (defined *infra*) and will continue to
27 occur into the future.
28

1 15. 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 a reasonably foreseeable use of the Products.

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

7 17. Defendants knew or should have known that the Products contained Acrylamide and
8 exposed individuals to Acrylamide in the way(s) provided above. The Notice informed Defendants of
9 the presence of Acrylamide in the Products. Likewise, media coverage concerning Acrylamide and
10 related chemicals in consumer products provided constructive notice to Defendants.

11 18. Defendants' actions in this regard were deliberate and not accidental.

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

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

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

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

26 **PRAYER FOR RELIEF**


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

28 1. Civil penalties in the amount of \$2,500 per day for each violation;

- 1 2. A preliminary and permanent injunction against Defendants from manufacturing,
2 importing, selling, and/or distributing Products in California without providing a clear
3 and reasonable warning as required by Proposition 65 and related Regulations;
4 3. Reasonable attorney’s fees and costs of suit; and
5 4. Such other and further relief as may be just and proper.

6
7 Dated: April 30, 2019

GLICK LAW GROUP, PC

8
9
10 By: 
11 Noam Glick
12 Attorneys for Plaintiff