

**FILED BY FAX**  
ALAMEDA COUNTY

July 29, 2019

CLERK OF  
THE SUPERIOR COURT  
By Shabra Iyamu, DeputyCASE NUMBER:  
**HG19028982****NICHOLAS & TOMASEVIC, LLP**

Craig M. Nicholas (SBN 178444)

Shaun A. Markley (SBN 291785)

Jake W. Schulte (SBN 293777)

225 Broadway, 19<sup>th</sup> Floor  
San Diego, California 92101

Tel: (619) 325-0492

Fax: (619) 325-0496

Email: craig@nicholaslaw.org

Email: smarkley@nicholaslaw.org

Email: jschulte@nicholaslaw.org

**GLICK LAW GROUP, PC**

Noam Glick (SBN 251582)

225 Broadway, Suite 2100  
San Diego, California 92101

Tel: (619) 382-3400

Fax: (619) 615-2193

Email: noam@glicklawgroup.com

Attorneys for Plaintiff Kim Embry

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

KIM EMBRY, an individual

Plaintiff,

v.

JET.COM, INC., a Delaware corporation;  
YUMTEE NATURALS, LTD., a New York  
corporation d/b/a FARM FRESH NUTS; and  
DOES 1 through 100, inclusive,

Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health &amp; Safety Code § 25249.6 et seq.)

**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 exposed consumers to  
5 Acrylamide by manufacturing, importing, selling, and/or distributing roasted nuts such as Farm Fresh  
6 Nuts Dry Roasted Salted Almonds (“Product(s)”). Defendants knew and intended that customers would  
7 ingest the Product containing Acrylamide.

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

13       3.       California identified and listed Acrylamide as a chemical known to cause cancer as early  
14 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February  
15 20, 2011.

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

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

**II.**  
**PARTIES**

23  
24  
25       6.       Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the  
26 health of California citizens through the elimination or reduction of toxic exposure from consumer  
27 products. She brings this action in the public interest pursuant to Health and Safety Code, section  
28 25249.7.

8. Defendant YUMTEE NATURALS, LTD. d/b/a FARM FRESH NUTS (“YumTee”) is a corporation organized and existing under the laws of New York. Defendant is not registered to do business in California, but does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. YumTee manufactures, imports, sells, or distributes Products in California and Alameda County, including, Farm Fresh Nuts Dry Roasted Salted Almonds.

9. The true names of Defendant 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.

10. 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 and Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.

11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. The Defendants conducted and continued to conduct business in this County as it relates to the Products.

12. The Defendants had sufficient minimum contacts in the State of California or otherwise purposefully avail themselves of the California market. Exercising jurisdiction over the Defendants would be consistent with traditional notions of fair play and substantial justice.

**IV.**  
**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
**(Violation of Proposition 65 – Against all Defendant)**

13. Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

17. The Product exposed individuals to Acrylamide through direct ingestion. This exposure is a natural and foreseeable consequence of Defendant placing the Product into the stream of commerce. As such, Defendant intended that consumers will ingest the Product, exposing them to Acrylamide.

18. Defendants knew or should have known that the Product contained Acrylamide and exposed individuals to Acrylamide in the ways provided above. The Notices informed Defendants of the presence of Acrylamide in the Product. Likewise, media coverage concerning Acrylamide and related chemicals in consumer products provided constructive notice to Defendant.

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

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

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

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

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

### PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants as follows:

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

Respectfully submitted:

Dated: July 26, 2019

**NICHOLAS & TOMASEVIC, LLP**

By:



Shaun Markley  
Attorney for Plaintiff