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

KIM EMBRY, an individual

Plaintiff,

BLUE DIAMOND GROWERS, a California
corporation and DOES 1 through 100,
inclusive,

Defendants.

Case No.:
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

FILED BY FAX
ALAMEDA COUNTY

June 08, 2018

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:

HG18908165

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I.
INTRODUCTION

1. 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.

2. 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.

4. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to Acrylamide in connection with Defendants’ manufacture, import, sale, or 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).)

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II.
PARTIES

6. Plaintiff KIM EMBRY 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 & Safety Code § 25249.7.

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IV.
CAUSES OF ACTION

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

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 Products containing Acrylamide in violation of California Health & 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 Products, 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 Products.

17. Products expose individuals to Acrylamide through direct ingestion. This exposure is a natural and foreseeable consequence of Defendants' placing Products into the stream of commerce. As such, Defendants intend that consumers will ingest Products, exposing them to Acrylamide.

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

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

20. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff issued a 60-Day Notice of Violation ("Notice(s)") as required by and in compliance with Proposition 65. Plaintiff provided the Notice 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.

