To: SUPERIOR COURT OF THE STATE O Page 6 of 10 2018-06-08 21:32:53 (GMT)

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15	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
16	IN AND FOR THE COUNTY OF ALAMEDA	
17	KIM EMBRY, an individual	Case No.:
18 19	Plaintiff, v.	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
20	THE KROGER COMPANY, an Ohio corporation; PINNACLE FOODS GROUP,	(Health & Safety Code § 25249.6 et seq.)
21	LLC, a Delaware corporation; BRUEGGER'S ENTERPRISES, INC. a Delaware corporation,	
22	and DOES 1 through 100, inclusive,	
23	Defendants.	
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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 bagels that consumers toast or grill
 to a golden brown ("Products"). Defendants both instruct customers to, and reasonably anticipate that
 customers will, toast and/or grill their bagels in this fashion. In other words, Defendants know and
 intend that customers will ingest Products containing Acrylamide.

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

14 3. California identified and listed Acrylamide as a chemical known to cause cancer as early
15 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February
16 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. (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. (Health & Safety Code, § 25249.7(b).)

#### II. <u>PARTIES</u>

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

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products. She brings this action in the public interest pursuant to Health and Safety Code, section
 25249.7.

7. Defendant THE KROGER COMPANY, an Ohio corporation ("Kroger"), is a
corporation organized and existing under the laws of Ohio. Defendant is registered to do business in
California, and does business in County of Alameda, within the meaning of Health and Safety Code,
section 25249.11. Kroger manufactures, imports, sells, or distributes Products in California and
Alameda County, including, for example Simple Truth Organic Plain Bagels 18 oz. and Lender's Bagel
Shop Bagels Plain 17.1 oz.

9 8. Defendant PINNACLE FOODS GROUP, LLC, a Delaware corporation ("Pinnacle"),
10 is a corporation organized and existing under the laws of Delaware. Defendant is registered to do
11 business in California, and does business in County of Alameda, within the meaning of Health and
12 Safety Code, section 25249.11. Pinnacle manufactures, imports, sells, or distributes Products in
13 California and Alameda County, including, for example, Lender's Bagel Shop Bagels Plain 17.1 oz.

9. Defendant BRUEGGER'S ENTERPRISES, INC., a Delaware corporation
("Bruegger's), is a corporation organized and existing under the laws of Delaware. Defendant does
business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
Bruegger's manufactures, imports, sells, or distributes Products in California and Alameda County,
including, for example, Bruegger's Bagels Plain Bagel.

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

III. VENUE AND JURISDICTION

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

1 12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil 2 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this 3 County. Defendants conducted and continue to conduct business in this County as it relates to Products. 4 13. Defendants have sufficient minimum contacts in the State of California or otherwise 5 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would 6 be consistent with traditional notions of fair play and substantial justice. 7 IV. **CAUSES OF ACTION** 8 FIRST CAUSE OF ACTION 9 (Violation of Proposition 65 – Against all Defendants) 10 14. Plaintiff incorporates by reference each and every allegation contained above. 11 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that 12 cause cancer, birth defects, and other reproductive harm. 13 16. Defendants manufactured, imported, sold, and/or distributed Products containing 14 Acrylamide in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and 15 believes such violations have continued after receipt of the Notices (defined *infra*) and will continue to 16 occur into the future. 17 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to 18 provide a clear and reasonable warning to consumers and individuals in California who may be exposed 19 to Acrylamide through reasonably foreseeable use of the Products. 20 18. Products expose individuals to Acrylamide through direct ingestion. This exposure is a 21 natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As 22 such, Defendants intend that consumers will ingest Products, exposing them to Acrylamide. 23 19. Defendants knew or should have known that the Products contained Acrylamide and 24 exposed individuals to Acrylamide in the ways provided above. The Notice informed Defendants of 25 the presence of Acrylamide in the Products. Likewise, media coverage concerning Acrylamide and 26 related chemicals in consumer products provided constructive notice to Defendants. 27 20. Defendants' actions in this regard were deliberate and not accidental. 28 4

21. 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.

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

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

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

### PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants, and each of them, 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 Products in California without providing a clear and reasonable
warning as required by Proposition 65 and related Regulations;

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3. Reasonable attorney's fees and costs of suit; and

Such other and further relief as may be just and proper.

23 Respectfully submitted:

24 Dated: June 8, 2018

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## **GLICK LAW GROUP, PC**

Slect By:

Noam Glick Attorney for Plaintiff