To: Superior Court of California Page 6 of 10 2019-11-05 22:30:33 (GMT)

16193930154 From: Samantha Dice

1 2 3 4 5 6 7 8 9	NICHOLAS & TOMASEVIC, LLP Craig M. Nicholas (SBN 178444) Jake Schulte (SBN 293888) 225 Broadway, 19 th Floor San Diego, California 92101 Tel: (619) 325-0492 Email: craig@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) 393-0154 Email: noam@glicklawgroup.com	FILED BY FAX ALAMEDA COUNTY November 05, 2019 CLERK OF THE SUPERIOR COURT By Shabra Iyamu, Deputy CASE NUMBER: HG19042100				
10	Attorneys for Plaintiff Kim Embry					
11	•	THE STATE OF CALIFORNIA				
12	IN AND FOR THE COUNTY OF ALAMEDA					
13	KIM EMBRY, an individual	Case No.;				
14 15	Plaintiff, v.	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF				
16	BLUE DIAMOND GROWERS, a California	(Health & Safety Code § 25249.6 et seq.)				
17	corporation, and RALPH'S GROCERY COMPANY, an Ohio corporation, DOES 1 through 100, inclusive,					
18 19	Defendants.					
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1	I. <u>INTRODUCTION</u>					
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 Blue Diamond Nut Thins					
6	("Products"). Defendants know and intend that customers will ingest Products containing Acrylamide.					
7	2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California					
8	Health and Safety Code, section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing					
9	business shall knowingly and intentionally expose any individual to a chemical known to the state to					
10	cause cancer or reproductive toxicity without first giving clear and reasonable warning to such					
11	individual" (Health & Safety Code, § 25249.6.)					
12	3. California identified and listed Acrylamide as a chemical known to cause cancer as early					
13	as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February					
14	of 2011.					
15	4. Defendants failed to sufficiently warn consumers and individuals in California about					
16	potential exposure to Acrylamide in connection with Defendants' manufacture, import, sale, or					
17	distribution of Products. This is a violation of Proposition 65.					
18	5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers					
19	in California before exposing them to Acrylamide in Products. (Health & Safety Code, § 25249.7(a).)					
20	Plaintiff also seeks civil penalties against Defendants for their violations of Proposition 65 along with					
21	attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)					
22						
23	PARTIES					
24	6. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the					
25	health of California citizens through the elimination or reduction of toxic exposure from consumer					
26	products. She brings this action in the public interest pursuant to Health and Safety Code, section					
27	25249.7.					

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7. Defendant BLUE DIAMOND GROWERS ("BDG"), is a corporation organized and
 existing under the laws of California. BDG is registered to do business in California, and does business
 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. BDG
 manufactures, imports, sells, or distributes the Products in California and Alameda County.

8. Defendant RALPH'S GROCERY COMPANY ("Ralph's"), is a corporation organized
and existing under the laws of California. Ralph's is registered to do business in California, and does
business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
Ralph's manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

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III. VENUE AND JURISDICTION

15 10. California Constitution Article VI, Section 10 grants the Superior Court original
ipurisdiction 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.

19 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
 20 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
 21 County. Defendants conducted and continue to conduct business in this County as it relates to Products.
 22 12. Defendants have sufficient minimum contacts in the State of California or otherwise
 23 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be
 24 consistent with traditional notions of fair play and substantial justice.

IV. <u>CAUSES OF ACTION</u>

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

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

3 COMPLAINT 1 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that
 2 cause cancer, birth defects, and other reproductive harm.

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

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

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

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

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19. Defendants' action 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") 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 Notice 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.

23 24 21. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendants.

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

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1	23.	Defendants are liable for a ma	aximur	n civil penalty of \$2,500 per da	y for each violation
2	of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also				
3	appropriate pursuant to Health and Safety Code, section 25249.7(a).				
4	PRAYER FOR RELIEF				
5	Wherefore, Plaintiff prays for judgment against Defendants as follows:				
6	1.	1. Civil penalties in the amount of \$2,500 per day for each violation;			
7	2. A preliminary and permanent injunction against Defendants from manufacturing,				
8	importing, selling, and/or distributing Products in California without providing a clear and reasonable				
9	warning as required by Proposition 65 and related Regulations;				
10	3.	Reasonable attorney's fees an	d cost	s of suit; and	
11	4.	Such other and further relief a	ıs may	be just and proper.	
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13	Respectfully submitted:				
14	Dated: Nover	nber 5, 2019		GLICK LAW GROUP, P.C	
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16 17			By:	Noam Slit	<u> </u>
18				Attorney for Plaintiff	
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