

I.
INTRODUCTION

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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 Organic Frozen Blueberry Waffles
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).)

II.
PARTIES

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

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

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

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

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

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

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

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

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