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19 Attorneys for Plaintiff Kim Embry

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF ALAMEDA**

22 KIM EMBRY, an individual  
 23  
 24 Plaintiff,  
 25  
 26 v.  
 27 THE KROGER COMPANY, an Ohio  
 28 corporation, and DOES 1 through 100,  
 inclusive,  
 Defendant.

Case No.:  
**COMPLAINT FOR CIVIL PENALTIES  
 AND INJUNCTIVE RELIEF**  
 (Health & Safety Code § 25249.6 et seq.)

**FILED BY FAX**  
 ALAMEDA COUNTY  
 July 19, 2019  
 CLERK OF  
 THE SUPERIOR COURT  
 By Cheryl Clark, Deputy  
 CASE NUMBER:  
**HG19027819**

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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 Defendant’s failure to inform the People of exposure to Furfuryl Alcohol, a known carcinogen. Defendant exposed consumers to Furfuryl Alcohol by manufacturing, importing, selling, and/or distributing Kroger Mini Twist Pretzels and Van de Kamp’s Hamburger Enriched Buns (“Products”). Defendant knew and intended that customers would ingest the Products containing Furfuryl Alcohol.

2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California 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 Furfuryl Alcohol as a chemical known to cause cancer as early as September 20, 2016.

4. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to Furfuryl Alcohol in connection with Defendant’s manufacture, import, sale, or distribution of the Products. This is a violation of Proposition 65.

5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in California before exposing them to Furfuryl Alcohol in the Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for their violations of Proposition 65 along with attorney’s fees and costs. (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 Health and Safety Code, section 25249.7.



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

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

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

10          16.       Products expose individuals to Furfuryl Alcohol through direct ingestion. This  
11 exposure is a natural and foreseeable consequence of Defendant placing Products into the stream of  
12 commerce. As such, Defendant intended that consumers will ingest Products, exposing them to Furfuryl  
13 Alcohol.

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

18          18.       Defendant's actions in this regard were deliberate and not accidental.

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

25          20.       The appropriate public enforcement agencies provided with the Notices failed to  
26 commence and diligently prosecute a cause of action against Defendant.

