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Attorneys for Plaintiff Kim Embry

**FILED BY FAX**  
ALAMEDA COUNTY  
October 31, 2019  
CLERK OF  
THE SUPERIOR COURT  
By Cheryl Clark, Deputy  
CASE NUMBER:  
**RG19041476**

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

KIM EMBRY, an individual  
  
Plaintiff,  
  
v.

COLOMBINA USA, a Florida corporation, 99  
CENT ONLY STORES, LLC, 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.)

**I.**  
**INTRODUCTION**

1  
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 Colombina Chocolate Wafers  
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 as of  
14 February 25, 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.  
28



1 **IV.**  
2 **CAUSES OF ACTION**

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

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

6 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
7 cause cancer, birth defects, and other reproductive harm.

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

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

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

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

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

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

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

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

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

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

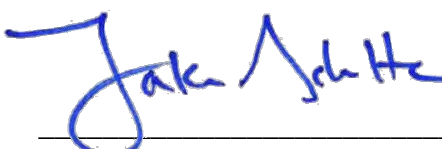
- 9 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 10 2. A preliminary and permanent injunction against Defendants from manufacturing,  
11 importing, selling, and/or distributing Products in California without providing a clear and reasonable  
12 warning as required by Proposition 65 and related Regulations;
- 13 3. Reasonable attorney's fees and costs of suit; and
- 14 4. Such other and further relief as may be just and proper.

15 Respectfully submitted:

16 Dated: October 31, 2019

**NICHOLAS & TOMASEVIC, LLP**

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18  
19 By: \_\_\_\_\_

  
Jake Schulte, Esq.  
Attorney for Plaintiff