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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 ORIGINAL GOURMET FOOD COMPANY,
 28 LLC., a New Hampshire corporation, 99
 CENTS 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.)

FILED BY FAX
 ALAMEDA COUNTY
 August 23, 2019
 CLERK OF
 THE SUPERIOR COURT
 By Milagros Cortez, Deputy
 CASE NUMBER:
HG19032455

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 bite size wafers (“Products”).
6 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,
8 California Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the
9 course of doing business shall knowingly and intentionally expose any individual to a chemical known
10 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
11 to such individual. . . .” (Health & Safety Code, § 25249.6.)

12 3. California identified and listed Acrylamide as a chemical known to cause cancer as
13 early as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity on
14 February 25, 2011.

15 4. Defendants failed to sufficiently warn consumers and individuals in California about
16 the 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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23
24 6. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting
25 the 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 consumers in California of the health hazards associated with exposures to Acrylamide contained in
2 the Products.

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

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

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

11 **PRAYER FOR RELIEF**

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

13 1. Civil penalties in the amount of \$2,500 per day for each violation;

14 2. A preliminary and permanent injunction against Defendants from manufacturing,
15 importing, selling, and/or distributing Products in California without providing a clear and reasonable
16 warning as required by Proposition 65 and related Regulations;

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

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

19 Respectfully submitted:

20 Dated: August 23, 2019

GLICK LAW GROUP, P.C.

21
22
23 By:



Noam Glick
Attorney for Plaintiff