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NICHOLAS & TOMASEVIC, LLP
Craig M. Nicholas (SBN 178444)
Shaun Markley (SBN 291785)
Jake Schulte (SBN 293777)
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: cnicholas@nicholaslaw.org
Email: smarkley@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) 615-2193
Email: noam@gllicklawgroup.com

Attorneys for Plaintiff Kim Embry

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

KIM EMBRY, an individual

Plaintiff,

v.

RALPH'S GROCERY COMPANY, an Ohio
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 09, 2019
CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy
CASE NUMBER:
HG19030679

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 Defendant’s failure to
4 inform the People of exposure to Acrylamide, a known carcinogen. Defendant exposed consumers to
5 Acrylamide by manufacturing, importing, selling, and/or distributing Ralphs Bakery Chocolate
6 Cupcakes (“Products”). Defendants know and intend that customers will ingest the Products containing
7 Acrylamide.

8 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
9 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
10 business shall knowingly and intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual. . . .” (Health & Safety Code, § 25249.6.)

13 3. California identified and listed Acrylamide as a chemical known to cause cancer as early
14 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity as of
15 February 20, 2011.

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

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

II.
PARTIES

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25 6. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the
26 health of California citizens through the elimination or reduction of toxic exposure from consumer
27 products. She brings this action in the public interest pursuant to Health and Safety Code, section
28 25249.7.

1 14. Defendant 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, Defendant 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 Defendant placing Products into the stream of commerce. As
10 such, Defendant intend that consumers will ingest Products, exposing them to Acrylamide.

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

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

16 19. More than sixty days prior to naming the 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 Defendant 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 Defendant.

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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