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1 2 3 4 5 6 7 8 9	NICHOLAS & TOMASEVIC, LLP Craig M. Nicholas (SBN 178444) Shaun Markley (SBN 291785) Jake Schulte (SBN 293777) 225 Broadway, 19 th Floor San Diego, California 92101 Tel: (619) 325-0492 Fax: (619) 325-0496 Email: cnicholas@nicholaslaw.org Email: smarkley@nicholaslaw.org Email: jschultc@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@glicklawgroup.com Attorneys for Plaintiff Kim Embry	FILED BY FAX ALAMEDA COUNTY August 09, 2019 CLERK OF THE SUPERIOR COURT By Shabra Iyamu, Deputy CASE NUMBER: HG19030679			
12	SUPERIOR COURT OF	THE STATE OF CALIFORNIA			
13	IN AND FOR THE COUNTY OF ALAMEDA				
14	KIM EMBRY, an individual	Case No.:			
15	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES			
16	V.	AND INJUNCTIVE RELIEF			
17	RALPH'S GROCERY COMPANY, an Ohio corporation, and DOES 1 through 100,	(Health & Safety Code § 25249.6 et seq.)			
18	inclusive,				
	Defendants.				
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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 Acrylamide, a known carcinogen. Defendant exposed consumers to Acrylamide by manufacturing, importing, selling, and/or distributing Ralphs Bakery Chocolate Cupcakes ("Products"). Defendants know and intend that customers will ingest the Products containing Acrylamide.
- 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 Acrylamide as a chemical known to cause cancer as early as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity as of February 20, 2011.
- 4. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to Acrylamide 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 Acrylamide in 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).)

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.

7. Defend	lant RALPH'S GROCERY COMPANY, an Ohio corporation ("Ralphs"), is a
corporation organized	and existing under the laws of Ohio. Defendant is registered to do business in
California, and does bu	siness in the County of Alameda, within the meaning of Health and Safety Code,
section 25249.11. Ral	ph's Grocery Company manufactures, imports, sells, or distributes the Products
n California and Alam	eda County, including, for example Ralphs Bakery Chocolate Cupcakes.

8. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff. Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

III. <u>VENUE AND JURISDICTION</u>

- 9. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.
- 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendant conducted and continues to conduct business in this County as it relates to the Products.
- 11. Defendant has sufficient minimum contacts in the State of California or otherwise purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would be consistent with traditional notions of fair play and substantial justice.

IV. CAUSES OF ACTION

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

- 12. Plaintiff incorporates by reference each and every allegation contained above.
- 13. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.

- 14. Defendant manufactured, imported, sold, and/or distributed Products containing Acrylamide in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notices (defined *infra*) and will continue to occur into the future.
- 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to Acrylamide through reasonably foreseeable use of the Products.
- 16. Products expose individuals to Acrylamide through direct ingestion. This exposure is a natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As such, Defendant intend that consumers will ingest Products, exposing them to Acrylamide.
- 17. Defendant knew or should have known that the Products contained Acrylamide and exposed individuals to Acrylamide in the ways provided above. The Notice informed Defendant of the presence of Acrylamide in the Products. Likewise, media coverage concerning Acrylamide and related chemicals in consumer products provided constructive notice to Defendant.
 - 18. Defendant's actions in this regard were deliberate and not accidental.
- 19. More than sixty days prior to naming the Defendant in this lawsuit, Plaintiff issued a 60-Day Notice of Violation ("Notice(s)") as required by and in compliance with Proposition 65. Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate of merit. The Notices alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to Acrylamide contained in the Products.
- 20. The appropriate public enforcement agencies provided with the Notices failed to commence and diligently prosecute a cause of action against Defendant.
- 21. Individuals exposed to Acrylamides contained in the Products through direct ingestion resulting from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

1	22.	Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation	n of
2	Proposition 65	pursuant to Health and Safety Code, section 252497(b). Injunctive relief is a	ılso
3	appropriate purs	rsuant to Health and Safety Code, section 25249.7(a).	
4		PRAYER FOR RELIEF	
5	Wherefo	Fore, Plaintiff prays for judgment against Defendant as follows:	
6	1.	Civil penalties in the amount of \$2,500 per day for each violation;	
7	2.	A preliminary and permanent injunction against Defendant from manufacturi	ing,
8	importing, selling	ing, and/or distributing Products in California without providing a clear and reasona	ıble
9	warning as required by Proposition 65 and related Regulations;		
10	3.	Reasonable attorney's fees and costs of suit; and	
11	4.	Such other and further relief as may be just and proper.	
12	Respectfully su	submitted:	
13	Dated: August	t 8, 2019 GLICK LAW GROUP, PC	
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15		By: Noan Slute	
16		Noam Glick	
17		Attorney for Plaintiff	
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