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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

KIM EMBRY, an individual

Plaintiff,

v.

MONDELEZ GLOBAL, LLC., a Delaware
corporation; RALPHS., a 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

June 18, 2019

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:
HG19023388

1 **I. INTRODUCTION**

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 Biscos Sugar Wafers (“Product”
6 or “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 in February
14 of 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 the Product. 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).)

22 **II. PARTIES**

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

27 7. Defendant MONDELEZ GLOBAL, LLC., (“Mondelez”), is a corporation organized
28 and existing under the laws of Delaware. Mondelez is registered to do business in California, and does

1 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
2 Mondelez manufactures, imports, sells, or distributes Products in California and Alameda County,
3 including, for example Biscos Sugar Wafers.

4 8. Defendant RALPHS GROCERY COMPANY. (“Ralphs”) is a corporation organized and
5 existing under the laws of the State of Ohio. Ralphs does business in California, and does business in the
6 County of Alameda, within the meaning of Cal. Health & Safety Code section 25249.11. Ralphs
7 manufactures, imports, sells, or distributes Products in California and Alameda County. (Ralphs and
8 Mondelez are collectively referred to as “Defendants.”)

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

13 III. VENUE AND JURISDICTION

14 10. California Constitution Article VI, Section 10 grants the Superior Court original
15 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
16 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
17 has jurisdiction.

18 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
19 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
20 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

21 12. Defendants have sufficient minimum contacts in the State of California or otherwise
22 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
23 be consistent with traditional notions of fair play and substantial justice.

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1 **IV. CAUSES OF ACTION**

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

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

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

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

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

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

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

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

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