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

KIM EMBRY, an individual

Plaintiff,

v.

LUCERNE FOODS, INC., a Delaware
corporation, THE VONS COMPANIES, INC.,
a Michigan 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:
HG19030680

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 Defendants’ failure to
4 inform the People of exposure to Acrylamide, a known carcinogen. Defendants exposed consumers to
5 Acrylamide by manufacturing, importing, selling, and/or distributing O Organics Dry Roasted Almonds
6 with Sea Salt (“Products”). Defendants knew and intended that customers will ingest the Products
7 containing 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. Defendants failed to sufficiently warn consumers and individuals in California about
17 potential exposure to Acrylamide in connection with Defendants’ manufacture, import, sale, or
18 distribution of the Products. This is a violation of Proposition 65.

19 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
20 in California before exposing them to Acrylamide in Products. (Health & Safety Code, § 25249.7(a).)
21 Plaintiff also seeks civil penalties against Defendants 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 7. Defendant LUCERNE FOODS, INC., a Delaware corporation (“Lucerne Foods”), is a
2 corporation organized and existing under the laws of Delaware. Defendant is registered to do business
3 in California, and does business in the County of Alameda, within the meaning of Health and Safety
4 Code, section 25249.11. Lucerne Foods, Inc. manufactures, imports, sells, or distributes the Products
5 in California and Alameda County, including, for example O Organics Dry Roasted Almonds with Sea
6 Salt.

7 8. Defendant THE VONS COMPANIES, INC., a Michigan corporation (“Vons”), is a
8 corporation organized and existing under the laws of Michigan. Defendant is registered to do business
9 in California, and does business in the County of Alameda, within the meaning of Health and Safety
10 Code, section 252249.11. The Vons Companies, Inc. manufactures, imports, sells, or distributes the
11 Products in California and Alameda County, including, for example O Organics Dry Roasted Almonds
12 with Sea Salt.

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

17 **III.**
VENUE AND JURISDICTION
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19 10. California Constitution Article VI, Section 10 grants the Superior Court original
20 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
21 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
22 has jurisdiction.

23 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
24 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
25 County. Defendants conducted and continue to conduct business in this County as it relates to the
26 Products.
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1 consumers in California of the health hazards associated with exposures to Acrylamide contained in the
2 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 Acrylamides 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 8, 2019

GLICK LAW GROUP, PC

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23 By: 
24 Noam Glick
25 Attorney for Plaintiff
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