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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.

JOHN B. SANFILIPPO & SON, INC., 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 25, 2019

CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy

CASE NUMBER:

RG19025632

COMPLAINT

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Plaintiff Kim Embry
3 (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendant John B. Sanfilippo & Son, Inc.’s (“Defendant”) failure to inform the
5 People of exposure to Acrylamide, a known carcinogen. Defendant exposed consumers to
6 Acrylamide by manufacturing, importing, selling, and/or distributing roasted almonds
7 (“Products”). Defendant knew and intended that customers will ingest the Products containing
8 Acrylamide.

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

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

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

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

II.
PARTIES

24
25
26 6. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting
27 the health of California citizens through the elimination or reduction of toxic exposure from
28

1 consumer products. She brings this action in the public interest pursuant to Health and Safety
2 Code, section 25249.7.

3 7. Defendant JOHN B. SANFILIPPO & SON, INC (“Defendant”) is a corporation
4 organized and existing under the laws of Delaware. Defendant is registered to do business in
5 California, and does business in the County of Alameda, within the meaning of Health and Safety
6 Code, section 25249.11. Defendant manufactures, imports, sells, or distributes Products in
7 California and Alameda County.

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

13 **III.**
VENUE AND JURISDICTION

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

19 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
20 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
21 County. Defendant has conducted and continue to conduct business in this County as it relates to
22 the Product.

23 11. Defendant has sufficient minimum contacts in the State of California or otherwise
24 purposefully avail themselves of the California market. Exercising jurisdiction over the Defendant
25 would be consistent with traditional notions of fair play and substantial justice.

1 **IV.**
2 **CAUSES OF ACTION**

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

5 12. Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

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

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

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

25 19. More than sixty days prior to naming the Defendant in this lawsuit, Plaintiff issued
26 a 60-Day Notice of Violation ("Notice(s)") as required by and in compliance with Proposition 65.
27 Plaintiff provided the Notice to the various required public enforcement agencies along with a
28 certificate of merit. The Notices alleged that the Defendant violated Proposition 65 by failing to

1 sufficiently warn consumers in California of the health hazards associated with exposures to
2 Acrylamide contained in the Products.

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

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

8 22. Defendant is 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 the Defendant 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 the Defendant from
15 manufacturing, importing, selling, and/or distributing the Product in California without providing
16 a clear and reasonable 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
20 Respectfully submitted:

21 Dated: June 25, 2019

NICHOLAS & TOMASEVIC, LLP

22
23
24 By:



Jake V. Schulte
Attorney for Plaintiff