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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 KIM EMBRY, an individual

13 Plaintiff,
14 v.

15 BIMBO BAKERIES USA, INC. a Delaware
16 corporation, TARGET CORPORATION, a
17 Minnesota corporation, THE KROGER COMPANY
18 dba RALPH'S, an Ohio corporation, FLOWER
19 BAKERIES, LLC, a Georgia corporation,
20 CALIFORNIA BAKING COMPANY, a California
21 corporation, SMART & FINAL STORES, INC., a
22 Delaware corporation, HOSTESS BRANDS, LLC, a
23 Delaware corporation, WALGREENS COMPANY,
24 an Illinois corporation, AMERIFOODS TRADING
25 CO., a Florida corporation, NATURE'S BEST,
26 INC., a California corporation, JIMBO'S
27 NATURAL FAMILY, INC., a California
28 corporation, DSD PARTNERS, INC., a Virginia
corporation, CVS PHARMACY, INC., a Rhode
Island corporation BAYS MICHIGAN
CORPORATION, a Michigan corporation, WAL-
MART STORES, INC., a California corporation and
DOES 1 through 100, inclusive,

Defendants.

UNDEPOSITED
FILED
ALAMEDA COUNTY
DEC 08 2017
CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

Case No.: **HF 17885297**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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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 expose consumers to
5 Acrylamide by manufacturing, importing, selling, and/or distributing bread that consumers toast or grill
6 to a golden brown (“Products”). Defendants both instruct customers to, and reasonably anticipate that
7 customers will, toast and/or grill their bread in this fashion. In other words, Defendants know and intend
8 that customers will ingest Products containing Acrylamide.

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

14 3. California identified and listed Acrylamide as a chemical known to cause cancer as early
15 as January 1, 1990 and known to cause developmental/reproductive toxicity in February of 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 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. (Cal. Health & Safety Code §
21 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for their violations of Proposition 65
22 along with attorney’s fees and costs. (Cal. Health & Safety Code § 25249.7(b).)

II.
PARTIES

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

27 7. Defendant BIMBO BAKERIES USA, INC. (“Bimbo”) is a corporation organized and
28 existing under the laws of Delaware. Defendant is registered to do business in California, and does

1 business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Bimbo
2 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
3 example Cinnabon Cinnamon, Bread, 16 oz.; Oroweat Country White Bread 24 oz.; and Ball Park Hot
4 Dog Buns 13 oz.

5 8. Defendant TARGET CORPORATION is a corporation organized and existing under
6 the laws of Minnesota. Defendant is registered to do business in California, and does business in County
7 of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Target Corporation
8 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
9 example, the “Market Pantry Brand” bread products.

10 9. Defendant THE KROGER COMPANY dba RALPH’S is a corporation organized and
11 existing under the laws of Ohio. Defendant is registered to do business in California, and does business
12 in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant
13 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
14 example, Cinnabon Cinnamon, Bread, 16 oz.; Ball Park Hot Dog Buns 13 oz.; Van de Kamp’s
15 Hamburger Enriched Buns 12 oz.; Cobblestone Bread Co. Original Bagels 20 oz.; Van De Kamp’s –
16 Western Hearth Country Potato Bread, Oroweat Country White Bread 24 oz.; Psst Enriched White
17 Bread, Home Pride Butter Top White Bread 20 oz.; Wonder Calcium Fortified Bread 20 oz. (The Kroger
18 Company and Ralph’s are collectively referred to as “Defendants.”)

19 10. Defendant FLOWER BAKERIES, LLC (“Flower Bakeries”) is a corporation organized
20 and existing under the laws of Georgia. Defendant is registered to do business in California, and does
21 business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Flowers
22 Bakery manufactures, imports, sells, or distributes Products in California and Alameda County,
23 including, for example, Cobblestone Bread Co. Original Bagels 20 oz.; Home Pride Butter Top White
24 Bread 20 oz.; Wonder Calcium Fortified Bread 20 oz.

25 11. Defendant CALIFORNIA BAKING COMPANY (“California Baking Co.”) is a
26 corporation organized and existing under the laws of California, Defendant is registered to do business
27 in California, and does business in County of Alameda, within the meaning of Cal. Health & Safety
28 Code § 25249.11. California Baking Co. manufactures, imports, sells, or distributes Products in

1 California and Alameda County, including, for example, California Baking Co. Cholesterol Free White
2 Bread.

3 12. Defendant SMART & FINAL STORES, INC. (“Smart & Final”) is a corporation
4 organized and existing under the laws of Delaware. Defendant is registered to do business in California,
5 and does business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11.
6 Smart & Final manufactures, imports, sells, or distributes Products in California and Alameda County,
7 including California Baking Co. Cholesterol Free White Bread, and First Street Bakery White Enriched
8 Sandwich Bread.

9 13. Defendant HOSTESS BRANDS, LLC. (“Hostess”) is a corporation organized and
10 existing under the laws of Delaware. Defendant is registered to do business in California, and does
11 business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Hostess
12 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
13 example, Hostess Classic White 20 oz.

14 14. Defendant WALGREENS COMPANY (“Walgreens”) is a corporation organized and
15 existing under the laws of Illinois. Defendant is registered to do business in California, and does business
16 in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Walgreens
17 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
18 example, Hostess Classic White 20 oz.

19 15. Defendant AMERIFOODS TRADING CO. (“Amerifoods”) is a corporation organized
20 and existing under the laws of Florida. Defendant is registered to do business in California, and does
21 business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11.
22 Amerifoods manufactures, imports, sells, or distributes Products in California and Alameda County,
23 including, for example, First Street Bakery White Enriched Sandwich Bread.

24 16. Defendant JIMBO’S NATURAL FAMILY, INC. (“Jimbo’s”) is a corporation
25 organized and existing under the laws of California. Defendant is registered to do business in California,
26 and does business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11.
27 Jimbo’s manufactures, imports, sells, or distributes Products in California and Alameda County,
28 including, for example, Cadia Organic Country White Sliced Bread 24 oz.

1 17. Defendant NATURE’S BEST, INC. (“Nature’s Best”) is a corporation organized and
2 existing under the laws of California. Defendant is registered to do business in California, and does
3 business in County of Alameda within the meaning of Cal. Health & Safety Code § 25249.11. Nature’s
4 Best manufactures, imports, sells, or distributes Products in California and Alameda County, including,
5 for example, Cadia Organic Country White Sliced Bread 24 oz.

6 18. Defendant DSD PARTNERS, INC. (“DSD”) is a corporation organized and existing
7 under the laws of Virginia. Defendant is registered to do business in California, and does business in
8 County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. DSD manufactures,
9 imports, sells, or distributes Products in California and Alameda County, including, for example,
10 Heavenly Sent White Bread 24 oz.

11 19. Defendant CVS PHARMACY, INC. (“CVS”) is a corporation organized and existing
12 under the laws of Rhode Island. Defendant is registered to do business in California, and does business
13 in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant
14 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
15 example, Heavenly Sent White Bread 24 oz.

16 20. Defendant BAYS MICHIGAN CORPORATION is a corporation organized and
17 existing under the laws of Michigan Defendant is registered to do business in California, and does
18 business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Bays
19 Michigan Corporation manufactures, imports, sells, or distributes Products in California and Alameda
20 County, including, for example, Bays Original English Muffins.

21 21. Defendant WAL-MART STORES, INC. (“Walmart”) is a corporation organized and
22 existing under the laws of California. Defendant is registered to do business in California, and does
23 business in County of Alameda, within the meaning of Cal. Health & Safety Code § 25249.11. Walmart
24 manufactures, imports, sells, or distributes Products in California and Alameda County, including, for
25 example, Bays Original English Muffins and Great Value Country Potato.

26 22. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.
27 Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis
28

1 alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein alleged.
2 When ascertained, their true names shall be reflected in an amended complaint.

3 23. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,
4 joint employers, or employees for each other. Defendants acted with the consent of the other Co-
5 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.
6 All conduct was ratified by Defendants, and each of them.

7 **III.**
VENUE AND JURISDICTION

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

12 25. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure
13 Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County.
14 Defendants conducted and continue to conduct business in this County as it relates to Products.

15 26. Defendants have sufficient minimum contacts in the State of California or otherwise
16 purposefully avails themselves of the California market. Exercising jurisdiction over Defendants would
17 be consistent with traditional notions of fair play and substantial justice.

18 **IV.**
CAUSES OF ACTION

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

21 27. Plaintiff incorporates by reference each and every allegation contained above.

22 28. Proposition 65 mandates that citizens be informed about exposures to chemicals that
23 cause cancer, birth defects, and other reproductive harm.

24 29. Defendants manufactured, imported, sold, and/or distributed Products containing
25 Acrylamide in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed
26 and believes such violations have continued after receipt of the Notices (defined *infra*) and will continue
27 to occur into the future.

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

4 31. Products expose individuals to Acrylamide through direct ingestion. This exposure is a
5 natural and foreseeable consequence of Defendants' placing Products into the stream of commerce. As
6 such, Defendants intend that consumers will ingest Products, exposing them to Acrylamide.

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

11 33. Defendants' actions in this regard were deliberate and not accidental.

12 34. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff issued a
13 60-Day Notice of Violation ("Notice(s)") as required by and in compliance with Proposition 65. Plaintiff
14 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
15 The Notices alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers
16 in California of the health hazards associated with exposures to Acrylamide contained in the Products.

17 35. The appropriate public enforcement agencies provided with the Notices failed to
18 commence and diligently prosecute a cause of action against Defendants.

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

22 37. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
23 of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also
24 appropriate pursuant to Health & Safety Code Section 25249.7(a).

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

3 1. Civil penalties in the amount of \$2,500 per day for each violation;

4 2. A preliminary and permanent injunction against Defendants from manufacturing,
5 importing, selling, and/or distributing Products in California without providing a clear and reasonable
6 warning as required by Proposition 65 and related Regulations;

7 3. Reasonable attorney’s fees and costs of suit; and

8 4. Such other and further relief as may be just and proper.

9
10 Dated: December 8, 2017

11 **GLICK LAW GROUP, PC**

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14 By: 
15 Noam Glick
16 Kathryn Turner-Arsenault

17 Attorneys for Plaintiff
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