To: Superior Court of California Page 6 of 10 2019-11-25 23:27:52 (GMT)

16193930154 From: Samantha Dice

1 2 3 4 5 6 7 8 9 10	NICHOLAS & TOMASEVIC, LLP Craig M. Nicholas (SBN 178444) Jake Schulte (SBN 293777) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 325-0492 Email: craig@nicholaslaw.org Email: jschulte@nicholaslaw.org GLICK LAW GROUP, PC Noam Glick (SBN 251582) 225 Broadway, Suite 2100 San Diego, California 92101 Tel: (619) 382-3400 Fax: (619) 393-0154 Email: noam@glicklawgroup.com Attorneys for Plaintiff Environmental Health Advocates, Inc.	FILED BY FAX ALAMEDA COUNTY November 25, 2019 CLERK OF THE SUPERIOR COURT By Milagros Cortez, Deputy CASE NUMBER: HG19044725	
11	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
12	IN AND FOR THE COUNTY OF ALAMEDA		
13	ENVIRONMENTAL HEALTH ADVOCATES, INC., an organization,	Case No.:	
14	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
15	v.	(Health & Safety Code § 25249.6 et seq.)	
16 17	KELLOGG SALES COMPANY, a Delaware corporation, and RALPH'S GROCERY COMPANY, an Ohio corporation, DOES 1		
18	through 100, inclusive, Defendants.		
19	Detendants.		
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COMPLAINT

I. **INTRODUCTION**

2 1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff seeks to remedy Kellogg Sales Company and Ralph's Grocery Store Company's ("Defendants") failure to inform the People of exposure to acrylamide, a known carcinogen. Defendants expose consumers to acrylamide by manufacturing, importing, selling, and/or distributing Keebler Ice Cream Cones ("Products"). Defendants know and intend that customers will ingest Products 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 early 14 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February 15 25, 2011.

16 Defendants failed to sufficiently warn consumers and individuals in California about 4. 17 potential exposure to acrylamide in connection with Defendants' manufacture, importation, sale, or 18 mere 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. (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).)

П. PARTIES

25 6. Plaintiff is an organization in the State of California dedicated to protecting the health 26 of California citizens through the elimination or reduction of toxic exposure from consumer products. 27 It brings this action in the public interest pursuant to Health and Safety Code, section 25249.7.

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7. Defendant Kellogg Sales Company ("Kellogg") is a corporation organized and existing
 under the laws of Delaware. Kellogg is registered to do business in California and does business in the
 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Kellogg
 manufactures, imports, sells, or distributes Products in California and Alameda, including, for example,
 Keebler Ice Cream Cones.

8. Defendant Ralph's Grocery Company ("Ralphs") is a corporation organized and
existing under the laws of Ohio. Ralphs is registered to do business in California and does business in
the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Ralphs
manufactures, imports, sells, or distributes Products in California and Alameda, including, for example,
Keebler Ice Cream Cones.

9. 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.

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III. VENUE AND JURISDICTION

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

11. 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. Defendants conducted and continue to conduct business in this County as it relates to Products.

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

3 COMPLAINT

IV. **CAUSES OF ACTION** FIRST CAUSE OF ACTION (Violation of Proposition 65 – Against all Defendants) 13. Plaintiff incorporates by reference each and every allegation contained above. Proposition 65 mandates that citizens be informed about exposures to chemicals that 14. cause cancer, birth defects, and other reproductive harm. 15. Defendants 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. 16. In manufacturing, importing, selling, and/or distributing Products, Defendants 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. 17. Products expose individuals to acrylamide through direct ingestion. This exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As such, Defendants intend that consumers will ingest Products, exposing them to acrylamide. 18. Defendants knew or should have known that the Products contained acrylamide and exposed individuals to acrylamide in the ways provided above. The Notices informed Defendants of the presence of acrylamide in the Products. Likewise, media coverage concerning acrylamide and related chemicals in consumer products provided constructive notice to Defendants. 19. Defendants' actions in this regard were deliberate and not accidental. 20. More than sixty days prior to naming each 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 Notices to the various required public enforcement agencies along with a certificate of merit. The Notices alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained

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in the Products.

1	21.	The appropriate public enforcement agencies provided with the Notices failed to	
2	commence and	diligently prosecute a cause of action against Defendants.	
3	22.	Individuals exposed to acrylamide contained in the Products through direct ingestion	
4	resulting from	reasonably foreseeable use of the Products have suffered and continue to suffer	
5	irreparable harr	n. There is no other plain, speedy, or adequate remedy at law.	
6	23.	Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation	
7	of Proposition	65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also	
8	appropriate pur	rsuant to Health and Safety Code, section 25249.7(a).	
9		PRAYER FOR RELIEF	
10	Wheref	ore, Plaintiff prays for judgment against Defendants, and each of them, as follows:	
11	1.	Civil penalties in the amount of \$2,500 per day for each violation;	
12	2.	A preliminary and permanent injunction against Defendants from manufacturing,	
13	importing, selling, and/or distributing Products in California without providing a clear and reasonable		
14	warning as required by Proposition 65 and related Regulations;		
15	3.	Reasonable attorney's fees and costs of suit; and	
16	4.	Such other and further relief as may be just and proper.	
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18	Respectfully submitted:		
19	Dated: Novem	ber 25, 2019 NICHOLAS & TOMASEVIC, LLP	
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21		Take Adutte	
22		By: Jake Schulte	
23		Attorney for Plaintiff	
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