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FILED BY FAX
ALAMEDA COUNTY
December 13, 2019
CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy
CASE NUMBER:
RG19046826

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

KIM EMBRY, an individual,
Plaintiff,

v.

BETTER LIVING BRANDS, LLC, a
California corporation, VONS COMPANIES,
INC. a Michigan corporation, ALBERTSONS
COMPANIES, LLC, a Delaware corporation
and DOES 1 through 100, inclusive,
Defendants.

Case No.:
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Cal. Health & Safety Code § 25249.6 et seq.)

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I. INTRODUCTION

1. This Complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the presence of acrylamide (“Listed Chemical”) prior to exposure. Defendants expose consumers to the acrylamide by manufacturing, importing, selling, and/or distributing Signature Select Cake Cups (“Products”) manufactured, imported, sold, or distributed for sale in California. Defendants know and intend that customers will ingest Products containing acrylamide.

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

3. California identified and listed acrylamide as a chemical known to cause cancer as early as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February of 2011.

4. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to acrylamide in connection with Defendants’ manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

5. Plaintiff seeks injunctive relief compelling Defendants to cease exposing consumers in California to acrylamide through its Products and/or sufficiently warn consumers in California before exposing them to acrylamide in Products pursuant to Proposition 65 and related Regulations. (Cal. Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65, attorney’s fees and costs. (Cal. Health & Safety Code, § 25249.7.)

II. PARTIES

6. Plaintiff KIM EMBRY (“Embry” or “Plaintiff”) is a citizen of the State of California dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposure from consumer products. She brings this action in the public interest

1 pursuant to California Health and Safety Code section 25249.7.

2 7. Defendant BETTER LIVING BRANDS, LLC (“Better Living”), is a corporation
3 organized and existing under the laws of California. Better Living is registered to do and does
4 business in California, County of Alameda, within the meaning of California Health and Safety
5 Code section 25249.11. Better Living manufactures, imports, sells, or distributes Products in
6 California and Alameda County.

7 8. Defendant VONS COMPANIES, INC. (“VONS”), is a corporation organized and
8 existing under the laws of Michigan. VONS is registered to do and does business in California,
9 County of Alameda, within the meaning of California Health and Safety Code section 25249.11.
10 VONS manufactures, imports, sells, or distributes Products in California and Alameda County.

11 9. Defendant ALBERTSONS COMPANIES, LLC (“Albertsons”), is a corporation
12 organized and existing under the laws of Delaware. Albertsons is registered to do and does
13 business in California, County of Alameda, within the meaning of California Health and Safety
14 Code section 25249.11. Albertsons manufactures, imports, sells, or distributes Products in
15 California and Alameda County.

16 10. Plaintiff does not know the true names and/or capacities, whether individual,
17 partners, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for
18 that reason sues said defendants under fictitious names. Plaintiff will seek leave to amend this
19 Complaint when the true names and capacities of these defendants have been ascertained.
20 Plaintiff is informed and believes and thereon alleges that these defendants are responsible in
21 whole or in part for Plaintiffs’ alleged damages.

22 **III. VENUE AND JURISDICTION**

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

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1 12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
2 Procedure sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
3 County. Defendants conducted and continue to conduct business in this County as it relates to
4 Products.

5 13. Defendants have sufficient minimum contacts in the State of California or
6 otherwise purposefully avails itself of the California market. Exercising jurisdiction over
7 Defendants would be consistent with traditional notions of fair play and substantial justice.

8
9 **IV. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**
11 **(Violation of Proposition 65 – Against all Defendants)**

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

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

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

19 17. In manufacturing, importing, selling, and/or distributing Products, Defendants
20 failed to provide a clear and reasonable warning to consumers and individuals in California who
21 may be exposed to acrylamide through reasonably foreseeable use of the Products.

22 18. Products expose individuals to acrylamide through direct ingestion. This exposure
23 is a natural and foreseeable consequence of Defendants placing Products into the stream of
24 commerce. As such, Defendants intend that consumers will ingest Products, exposing them to
25 acrylamide.

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1 19. Defendants knew or should have known that the Products contained acrylamide
2 and exposed individuals to acrylamide in the ways provided above. The Notice informed
3 Defendants of the presence of acrylamide in the Products. Likewise, media coverage concerning
4 acrylamide and related chemicals in consumer products provided constructive notice to
5 Defendants.

6 20. Defendants' actions in this regard were deliberate and not accidental.

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

13 22. The appropriate public enforcement agencies provided with the Notices failed to
14 commence and diligently prosecute a cause of action against Defendants.

15 23. Individuals exposed to acrylamide contained in the Products through direct
16 ingestion resulting from reasonably foreseeable use of the Products have suffered and continue to
17 suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

18 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each
19 violation of Proposition 65 pursuant to California Health and Safety Code section 252497(b).
20 Injunctive relief is also appropriate pursuant to California Health and Safety Code section
21 25249.7(a).

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V. PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. Civil penalties in the amount of \$2,500 per day for each violation;
2. A preliminary and permanent injunction against Defendant from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;
3. Reasonable attorney’s fees and costs of suit; and
4. Such other and further relief as may be just and proper.

Respectfully submitted:

Dated: December 13, 2019

GLICK LAW GROUP, PC

By: 

Noam Glick
Attorneys for Plaintiff