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ALAMEDA COUNTY
December 05, 2019
CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy
CASE NUMBER:
HG19045678

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

KIM EMBRY, an individual,

Plaintiff,

v.

AMERICAN DAIRY QUEEN
CORPORATION, a Delaware corporation, and
DOES 1 through 100, inclusive,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

1
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 Defendant’s failure to
4 inform the People of exposure to acrylamide, a known carcinogen. Defendant exposed consumers to
5 acrylamide by manufacturing, importing, selling, and/or distributing Ice Cream Cup (“Product” or
6 “Products”). Defendant knew and intended that customers would ingest Products containing acrylamide.

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

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

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

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

II.
PARTIES

22
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 Health and Safety Code, section
27 25249.7.
28

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

5 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
6 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
7 to acrylamide through reasonably foreseeable use of the Products.

8 16. Products expose individuals to acrylamide through direct ingestion. This exposure is a
9 natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As
10 such, Defendant intend that consumers would ingest Products, exposing them to acrylamide.

11 17. Defendant knew or should have known that the Products contained acrylamide and
12 exposed individuals to acrylamide in the ways provided above. The Notice informed Defendant of the
13 presence of acrylamide in the Products. Likewise, media coverage concerning acrylamide and related
14 chemicals in consumer products provided constructive notice to Defendants.

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

16 19. More than sixty days prior to naming the Defendant in this lawsuit, Plaintiff issued a
17 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
18 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
19 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
20 California of the health hazards associated with exposures to Acrylamide contained in the Products.

21 20. The appropriate public enforcement agencies provided with the Notice failed to
22 commence and diligently prosecute a cause of action against Defendants.

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

26 22. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
27 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
28 appropriate pursuant to Health and Safety Code, section 25249.7(a).

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PRAYER FOR RELIEF


Wherefore, Plaintiff prays for judgment against Defendants 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 4, 2019

GLICK LAW GROUP, PC

By: 

 Noam Glick
 Attorney for Plaintiff