

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS:	330 W Broadway
MAILING ADDRESS:	330 W Broadway
CITY AND ZIP CODE:	San Diego, CA 92101-3827
BRANCH NAME:	Central
TELEPHONE NUMBER:	(619) 450-7068
PLAINTIFF(S) / PETITIONER(S): Brad Van Patten	
DEFENDANT(S) / RESPONDENT(S): Kellogg Company	
VAN PATTEN VS KELLOGG COMPANY [IMAGED]	
<b>NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE</b>	CASE NUMBER: 37-2020-00008328-CU-MC-CTL

**CASE ASSIGNED FOR ALL PURPOSES TO:**

Judge: Richard S. Whitney

Department: C-68

**COMPLAINT/PETITION FILED: 02/14/2020**

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	12/18/2020	09:30 am	C-68	Richard S. Whitney

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

\*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



## Superior Court of California County of San Diego

### NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

**This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at [www.onelegal.com](http://www.onelegal.com) for information.**

**This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).**

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

### ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2020-00008328-CU-MC-CTL

CASE TITLE: Van Patten vs Kellogg Company [IMAGED]

**NOTICE:** All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

#### **Potential Advantages and Disadvantages of ADR**

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

##### **Potential Advantages**

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

##### **Potential Disadvantages**

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

#### **Most Common Types of ADR**

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

**Mediation:** A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

**Settlement Conference:** A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

**Arbitration:** A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

**Other ADR Processes:** There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

### **Local ADR Programs for Civil Cases**

**Mediation:** The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

**On-line mediator search and selection:** Go to the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

**Settlement Conference:** The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

**Arbitration:** The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

**More information about court-connected ADR:** Visit the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) or contact the court's Mediation/Arbitration Office at (619) 450-7300.

**Dispute Resolution Programs Act (DRPA) funded ADR Programs:** The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at [www.ncrconline.com](http://www.ncrconline.com) or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at [www.nclifeline.org](http://www.nclifeline.org) or (760) 726-4900.

**Private ADR:** To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

### **Legal Representation and Advice**

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at [www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost).

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<b>FOR COURT USE ONLY</b>
PLAINTIFF(S): Brad Van Patten	
DEFENDANT(S): Kellogg Company	
SHORT TITLE: VAN PATTEN VS KELLOGG COMPANY [IMAGED]	
<b>STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	CASE NUMBER: 37-2020-00008328-CU-MC-CTL

Judge: Richard S. Whitney

Department: C-68

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- |   |  |
|---|--|
| <input type="checkbox"/> Mediation (court-connected)  | <input type="checkbox"/> Non-binding private arbitration   |
| <input type="checkbox"/> Mediation (private)  | <input type="checkbox"/> Binding private arbitration   |
| <input type="checkbox"/> Voluntary settlement conference (private)                            | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private)   | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ |  |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

Alternate neutral (for court Civil Mediation Program and arbitration only): \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Plaintiff

\_\_\_\_\_  
Name of Defendant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Plaintiff's Attorney

\_\_\_\_\_  
Name of Defendant's Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

**IT IS SO ORDERED.**

Dated: 02/14/2020

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): George Rikos, Esq. (SBN 204864) Law Offices of George Rikos 555 West Beech, Suite 500 San Diego, California 92101 TELEPHONE NO.: (858) 342-9161 FAX NO.: (858) 724-1453 ATTORNEY FOR (Name): Brad Van Patten		FOR COURT USE ONLY FILED 2020 FEB 14 P 2:18 SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central Division		
CASE NAME: Brad Van Patten v. Kellogg Company		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		CASE NUMBER: 37-2020-00008328-CU-MC-CTL
<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/PD/WD (23) <b>Non-P/PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): One; Violation of Proposition 65
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 14, 2020  
 George Rikos

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

VIA FAX

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only—  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint—  
Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

KELLOGG COMPANY, a Delaware corporation; and DOES 1 through 10

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

BRAD VAN PATTEN, an individual

FILED  
FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

2020 FEB 14 P 2:18

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of California  
County of San Diego - Central Division  
330 West Broadway, San Diego, California 92101

CASE NUMBER:  
(Número del Caso):  
**37-2020-00008328-CU-MC-CTL**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
George Rikos (204684), 555 West Beech, Suite 500 San Diego, California, 92101; Tel (858) 342-9161

DATE:  
(Fecha) **FEB 14 2020**

Clerk, by V. Contreras, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):



George Rikos, Esq. (SBN 204864)  
**LAW OFFICES OF GEORGE RIKOS**  
555 West Beech Street, Suite 500  
San Diego, CA 92101  
Telephone: (858) 342-9161  
Facsimile: (858) 724-1453  
Email: george@georgerikoslaw.com

Attorneys for Plaintiff,  
Brad Van Patten

FILED  
BUSINESS OFFICE 10  
DIVISION

2020 FEB 14 P 2:18

CLERK - SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

BRAD VAN PATTEN, an individual

Plaintiff,

v.

KELLOGG COMPANY, a Delaware  
Corporation; and DOES 1 through 10

Defendants.

Case No. **37-2020-00008328-CU-MC-CTL**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Plaintiff Brad Van Patten ("Plaintiff") brings this action in the interests of the general public and, on information and belief, hereby alleges:

**INTRODUCTION**

1. This action seeks to remedy the continuing failure of defendant Kellogg Company to warn individuals in California that they are being exposed to the chemical acrylamide by their product, the Austin Toasty Crackers with Peanut Butter ("Product"). The Product is specifically marketed to children, one of the most vulnerable populations in the State of California.

2. California's Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally expose individuals in California to chemicals known to the State to cause cancer, birth defects, or other reproductive harm without providing clear and reasonable warnings to individuals prior to

1 exposure.

2       3.       When consumers eat the Products, they are exposed to acrylamide at  
3 levels requiring a “clear and reasonable warning” under Proposition 65. Despite this fact,  
4 Defendant has failed to provide any warning to consumers that they are being exposed to the  
5 carcinogenic chemical acrylamide.

6       4.       Defendant’s past and continued manufacturing, distribution, and sale of the Product  
7 in California without a clear and reasonable warning causes individuals to be involuntarily and  
8 unwittingly exposed to acrylamide at levels that violate Proposition 65.

9       5.       Plaintiff seeks injunctive relief enjoining Defendant from the continued  
10 manufacturing, distribution, and/or sales of the Products in California without provision of clear  
11 and reasonable warnings regarding the risks of cancer posed by exposure to acrylamide through  
12 consumption of the Products. Plaintiff seeks an injunctive order compelling Defendant to bring  
13 their business practices into compliance with Proposition 65 by providing a clear and reasonable  
14 warning to each individual who has been and who in the future may be exposed to acrylamide  
15 from consumption of the Products. Plaintiff also seeks an order compelling Defendant to identify  
16 and locate each individual person who in the past has purchased the Product, and to provide to  
17 each such purchaser a clear and reasonable warning that use of the Product will cause exposures to  
18 acrylamide.

#### 19                                   **JURISDICTION AND VENUE**

20       6.       This Court has jurisdiction over this action pursuant to Health and Safety Code §  
21 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and  
22 pursuant to California Constitution Article VII, Section 10, which grants the Superior Court  
23 “original jurisdiction in all causes except those given by statute to other courts.” The causes of  
24 actions alleged herein are not given by statute to other trial courts.

25       7.       This Court has jurisdiction over Defendant because Defendant is a business having  
26 sufficient minimum contacts with California, or otherwise intentionally availing themselves of the  
27 California market through the distribution and sale of the Products in the State of California to  
28 render the exercise of jurisdiction over this defendant by the California courts consistent with

1 traditional notions of fair play and substantial justice.

2 8. Venue in this action is proper in the San Diego Superior Court because Defendant  
3 has violated or threaten to violate California law in the County of San Diego.

4 **PARTIES**

5 9. Plaintiff Brad Van Patten is a resident of San Diego County California and working  
6 to protect human health and the environment by curbing the use of harmful food production  
7 technologies and by promoting organic and other forms of sustainable agriculture. Plaintiff is a  
8 person with the meaning of Health & Safety Code § 25118 and brings this enforcement action in  
9 the public interest pursuant to Health & Safety Code § 25249.7(d).

10 10. Defendant is a corporation organized under the State of Delaware and is a person  
11 doing business with the meaning of Health & Safety Code § 25249.11.

12 11. Defendant has manufactured, packaged, distributed, marketed and/or offered the  
13 Product for sale or use in California and the County of San Diego. Plaintiff is informed and  
14 believes, and thereupon alleges, that Defendant continues to manufacture, package, distribute,  
15 market and/or sell the Products in California and in San Diego County.

16 **STATUTORY BACKGROUND**

17 12. The People of the State of California have declared in Proposition 65 their right  
18 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
19 reproductive harm.” Section 1(b) of Initiative Measure, Proposition 65.

20 13. To effect this goal, Proposition 65 requires that individuals be provided with a  
21 “clear and reasonable warning” before being exposed to substances listed by the State of  
22 California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in  
23 pertinent part:

24 No person in the course of doing business shall knowingly and intentionally  
25 expose any individual to a chemical known to the state to cause cancer or  
26 reproductive toxicity without first giving clear and reasonable warning to such  
individual...

27 14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or  
28 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No

1 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs.  
2 (“CCR”) §§ 25102(n).

3 15. Proposition 65 provides that any “person who violates or threatens to violate” the  
4 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.  
5 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a  
6 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).  
7 Violators are liable for visit penalties of up to \$2,500 per day for each violation of the Act. Health  
8 & Safety Code § 25249.7.

9 16. On January 1, 1990, the State of California officially listed the chemical acrylamide  
10 as a chemical known to cause cancer. Acrylamide became subject to the warning requirement one  
11 year later and was therefore subject to the “clear and reasonable” warning requirements of  
12 Proposition 65 beginning on January 1, 1991. Health & Safety Code § 25249.6 *et seq.*; 27 Cal.  
13 Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of acrylamide, the no significant risk  
14 legal for acrylamide is 0.2 µg/day (micrograms per day). 27 Cal. Code Regs. § 25705(b)(1).

### 15 **FACTUAL BACKGROUND**

16 17. To test Defendant’s Products for acrylamide, Plaintiff hired a well-  
17 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of the  
18 Products show that they were in violation of the 0.2 microgram per day (“µg/day”) for acrylamide  
19 “safe harbor” daily dose limits set forth in Proposition 65’s regulations.

20 18. Based on testing results, on September 16, 2019, Plaintiff sent a 60-Day Notice of  
21 Proposition 65 Violations (“Notice”) to defendant regarding the Product. A true and correct copy  
22 of the 60-Day Notice letter is attached here as **Exhibits A** and is incorporated herein by reference.

23 19. On the same day they were sent to Defendant, each Notice was also sent to the  
24 requisite public enforcement agencies.

25 20. Each of the Notices described above were issued pursuant to, and in compliance  
26 with, the requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing  
27 regulations regarding the notice of the violations to be given to certain public enforcement  
28 agencies and to the violators. Each of the Notices included, *inter alia*, the following information:

1 the name, address, and telephone number of the noticing individuals; the name of the alleged  
2 violator; the statute violated; the approximate time period during which violations occurred; and  
3 descriptions of the violations, including the chemical involved, the routes of toxic exposure, and  
4 the specific product or type of product causing the violations, and was issued as follows:

- 5 a. The relevant Defendant was provided a copy of the Notice by U.S. Mail.
- 6 b. The relevant Defendant was provided a copy of the document entitled "The  
7 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
8 Summary," which is also known as Appendix A to Title 27 of Cal. Code Regs §  
9 25903.
- 10 c. The California Attorney General was provided a copy of the Notice via online  
11 submission.
- 12 d. The California Attorney General was provided with a Certificate of Merit by  
13 the attorney for the noticing party, stating that there is a reasonable and  
14 meritorious case for this action, and attaching factual information sufficient to  
15 establish a basis for the certificate, including the identity of the persons  
16 consulted with and relied on by the certified, and the facts, studies, or other data  
17 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 18 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within  
19 which the Nut Butter Products are offered for sale within California were  
20 provided with a copy of the Notice pursuant to Health & Safety Code §  
21 25249.7(d)(1).

22 21. At least 60-days have elapsed since Plaintiff sent each of the Notices to Defendant.  
23 The appropriate public enforcement agencies have failed to commence and diligently prosecute a  
24 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendant based on the  
25 allegations herein.

26 22. On information and belief, the Products have been manufactured,  
27 distributed, and/or sold by Defendant for consumption in California. On information and belief,  
28 the Product continues to be distributed and sold in California without the requisite warning

1 information.

2 23. At all times relevant to this action, Defendant have knowingly and intentionally  
3 exposed the users of the Products to acrylamide without first giving a clear and reasonable  
4 warning to such individuals.

5 24. As a proximate result of acts of Defendant as persons in the course of doing  
6 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the  
7 State of California, including the County of San Diego, have been exposed to acrylamide without  
8 a clear and reasonable warning. The individuals subject to the illegal exposures include normal  
9 and foreseeable users of the Products, as well as all other persons exposed to the Products.

10  
11 **FIRST CAUSE OF ACTION**  
12 **(Violations of Health and Safety Code § 25249.5, *et seq.*)**

13 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,  
14 inclusive, as if specifically set forth herein.

15 26. Defendant is a person doing business within the meaning of Health & Safety Code  
16 § 25249.11.

17 27. Acrylamide is listed on the State of California as a chemical known to cause  
18 cancer.

19 28. Defendant has and continues to knowingly and intentionally expose individuals  
20 who ingest the Products to the chemical acrylamide without first providing a clear and reasonable  
21 warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).

22 29. Continuing commission by Defendant of the acts alleged above will irreparably  
23 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
24 adequate remedy at law.

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff prays for the following relief:

27 1. A preliminary and permanent injunction, pursuant to Health & Safety Code §  
28 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in

1 concert or participating with Defendants, from distributing or selling the Products in California  
2 without first providing a clear and reasonable warning that consumers of the Products are exposed  
3 to acrylamide;

4       2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling  
5 Defendants to identify and locate each individual who has purchased the Product and to provide a  
6 warning to such persons that consumption of the Peanut Butter will expose the consumers to a  
7 chemical known to cause cancer.

8       3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)  
9 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

10       4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to  
11 California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the  
12 Court; and,

13       5. Such other and further relief as may be just and proper.  
14

15 DATED: February 14, 2020

**LAW OFFICES OF GEORGE RIKOS**

*George Rikos*

George Rikos

Attorney for Plaintiff

Brad Van Patten

## Exhibit A



**LAW OFFICES OF GEORGE RIKOS**

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225 Broadway, Suite 2100 • San Diego, CA 92101 • TEL: (858) 342-9161 • FAX: (858) 724-1453

September 16, 2019

**SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING  
WATER AND TOXIC ENFORCEMENT ACT OF 1986**  
*(Cal. Health & Safety Code § 25249.5, et seq.)*  
*("Proposition 65")*

The Corporation Trust Company  
Registered Agent for Service of  
Kellogg Company  
Corporation Trust Center 1209 Orange Street  
Wilmington, Delaware 19801

Steven A. Cahillane  
Chief Executive Officer  
Kellogg Company  
One Kellogg Square  
Battle Creek, Michigan 49017

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

**Re: Violations of Proposition 65 concerning Austin Toasty Crackers with Peanut Butter  
containing Acrylamide**

Dear Mr. Cahillane and Agent for Service of Process:

**Brad Van Patten**, the noticing entity, located at **225 Broadway, Suite 2100, San Diego, California, 92101**, serves this Notice of Violation ("Notice") upon Kellogg Company. ("Violator") pursuant to and in compliance with Proposition 65. Violator may contact Law Offices of George Rikos concerning this Notice through its designated person, his attorney, George Rikos, 225 Broadway, Suite 2100, San Diego, California 92101, Telephone no. (858) 342-9161, email: [George@georgerikoslaw.com](mailto:George@georgerikoslaw.com). This Notice satisfies a prerequisite for Mr. Van Patten to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney

addresses listed in the attached distribution list. Mr. Van Patten is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- Brad Van Patten is a resident of the State of California. By sending this Notice, Mr. Van Patten is acting “in the public interest” pursuant to Proposition 65. Mr. Van Patten is a concerned citizen and resident of California and is dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[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.
- **Austin Toasty Crackers with Peanut Butter** contain **Acrylamide**, which is known to the State of California to cause both cancer and reproductive toxicity, such as birth defects and other reproductive harm. **Acrylamide** was added to the Proposition 65 list in 1990. In February of 2011, it was added to the Proposition list as causing reproductive and developmental effects. Both additions took place before Mr. Van Patten served this Notice.
  - An exemplar of the violations caused by **Austin Toasty Crackers with Peanut Butter** includes but is not limited to: **Austin Toasty Crackers with Peanut Butter**
- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably-foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27* § 25602(b).

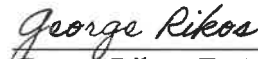
Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Austin Toasty Crackers with Peanut Butter**. The packaging for **Austin Toasty Crackers with Peanut Butter** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, with regard to **Austin Toasty Crackers with Peanut Butter**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, with regard to **Austin Toasty Crackers with Peanut Butter**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, or a combination thereof.

The principal routes of exposure were through ingestion.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code* § 25249.7(d)(1). With this letter, Mr. Van Patten gives notice of the alleged violation to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus five (5) calendar days because the place of address is within the State of California), Mr. Van Patten may file suit. *See Cal. Health & Safety Code* § 25249.7(d)(1); *Cal. Code Regs.* 27 § 25903(d)(1); and *Cal. Code Civ. Proc.* § 1013. Mr. Van Patten remains open to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violators, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: September 16, 2019



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George Rikos, Esq.

Attorney for Brad Van Patten

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### **WHAT DOES PROPOSITION 65 REQUIRE?**

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

---

<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4).

### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

***FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...***

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at  
[P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.



**Austin Toasty Crackers with Peanut Butter containing Acrylamide**

**CERTIFICATE OF MERIT**

Health & Safety Code Section 25249.7(d)

I, George Rikos, hereby declares:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established, and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certified, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 16, 2019

By:

  
George Rikos

## CERTIFICATE OF SERVICE

Health & Safety Code Section 25249.7(d)

I am over the age of 18 and not a party to this case. I am a resident of employed in the county where the mailing occurred. My business address is 225 Broadway, Suite 2100, San Diego, California 92101.

ON THE DATE SHOWN BELOW, I CAUSED TO BE SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: San Diego, California

### **Name and address of each party to whom documents were mailed:**

The Corporation Trust Company  
Registered Agent for Service of  
Kellogg Company  
Corporation Trust Center 1209 Orange Street  
Wilmington, Delaware 19801

Steven A. Cahillane  
Chief Executive Officer  
Kellogg Company  
One Kellogg Square  
Battle Creek, Michigan 49017

### **Name and address of each public prosecutor to whom documents were mailed:**

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: September 16, 2019

By:

  
George Rikos

# MAIL SERVICE LIST

The Honorable Michael Atwell  
Alpine County District Attorney  
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The Honorable Todd Riebe  
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Butte County District Attorney  
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## **ELECTRONIC UPLOAD SERVICE LIST**

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
P.O. Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>