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Attorneys for Plaintiff  
Kim Embry

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

KIM EMBRY, an individual,  
Plaintiff,

v.

SCONZA CANDY COMPANY, a California  
corporation, CVS PHARMACY INC., a  
Rhode Island 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.)

**FILED BY FAX**  
ALAMEDA COUNTY  
December 13, 2019  
CLERK OF  
THE SUPERIOR COURT  
By Burt Moskaira, Deputy  
CASE NUMBER:  
**RG19046800**

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2 **I. INTRODUCTION**

3 1. This Complaint is a representative action brought by Plaintiff in the public interest  
4 of the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be  
5 informed of the presence of acrylamide (“Listed Chemical”) prior to exposure. Defendants  
6 exposes consumers to the acrylamide by manufacturing, importing, selling, and/or distributing  
7 Goodfields Dark Chocolate Covered Almonds and Sconza Lemoncello Chocolate Almonds  
8 (“Products”) manufactured, imported, sold, or distributed for sale in California. Defendants know  
9 and intend that customers will ingest Products containing acrylamide.

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

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

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

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

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1 **II. PARTIES**

2 6. Plaintiff KIM EMBRY (“Embry” or “Plaintiff”) is a citizen of the State of  
3 California dedicated to protecting the health of California citizens through the elimination or  
4 reduction of toxic exposure from consumer products. She brings this action in the public interest  
5 pursuant to California Health and Safety Code section 25249.7.

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

11 8. Defendant CVS PHARMACY INC. (“CVS”), is a corporation organized and  
12 existing under the laws of Rhode Island. CVS is registered to do and does business in California,  
13 County of Alameda, within the meaning of California Health and Safety Code section 25249.11.  
14 CVS manufactures, imports, sells, or distributes Products in California and Alameda County.

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

21 **III. VENUE AND JURISDICTION**

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

26 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil  
27 Procedure sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
28 County. Defendants conducted and continue to conduct business in this County as it relates to

1 Products.

2 12. Defendants have sufficient minimum contacts in the State of California or  
3 otherwise purposefully avails itself of the California market. Exercising jurisdiction over  
4 Defendants would be consistent with traditional notions of fair play and substantial justice.

5 **IV. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**  
7 **(Violation of Proposition 65 – Against all Defendants)**

8 13. Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

18 17. Products expose individuals to acrylamide through direct ingestion. This exposure  
19 is a natural and foreseeable consequence of Defendants placing Products into the stream of  
20 commerce. As such, Defendants intend that consumers will ingest Products, exposing them to  
21 Acrylamide.

22 18. Defendants knew or should have known that the Products contained Acrylamide  
23 and exposed individuals to acrylamide in the ways provided above. The Notice informed  
24 Defendants of the presence of acrylamide in the Products. Likewise, media coverage concerning  
25 acrylamide and related chemicals in consumer products provided constructive notice to  
26 Defendants.

27 19. Defendants' actions in this regard were deliberate and not accidental.

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1           20.     More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff  
2 issued a 60-Day Notice of Violation (“Notice(s)”) as required by and in compliance with  
3 Proposition 65. Plaintiff provided the Notices to the various required public enforcement agencies  
4 along with a certificate of merit. The Notices alleged that Defendants violated Proposition 65 by  
5 failing to sufficiently warn consumers in California of the health hazards associated with  
6 exposures to acrylamide contained in the Products.

7           21.     The appropriate public enforcement agencies provided with the Notices failed to  
8 commence and diligently prosecute a cause of action against Defendants.

9           22.     Individuals exposed to acrylamide contained in the Products through direct  
10 ingestion resulting from reasonably foreseeable use of the Products have suffered and continue to  
11 suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.  
12 Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation of  
13 Proposition 65 pursuant to California Health and Safety Code section 252497(b). Injunctive relief  
14 is also appropriate pursuant to California Health and Safety Code section 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**

By:



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Noam Glick

Attorneys for Plaintiff  
Kim Embry