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2020-06-12 17:42:54 (GMT)

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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.  
  
TORN & GLASSER, INC., a California  
corporation, and DOES 1 through 100,  
inclusive,  
  
Defendants.

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

**FILED BY FAX**  
ALAMEDA COUNTY  
June 12, 2020  
CLERK OF  
THE SUPERIOR COURT  
By Cheryl Clark, Deputy  
CASE NUMBER:  
**RG20064715**

**I.**  
**INTRODUCTION**

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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 Defendants’ failure to  
4 inform the People of exposure to acrylamide, a known carcinogen. Defendants expose consumers to  
5 acrylamide by manufacturing, importing, selling, and/or distributing Dark Chocolate Walnuts and Dark  
6 Chocolate Almonds (“Products”). Defendants know and intend that customers will ingest Products  
7 containing acrylamide.

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

13           3.       California identified and listed acrylamide as a chemical known to cause cancer as early  
14 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity as of  
15 February 25, 2011.

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

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

**II.**  
**PARTIES**

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25           6.       Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the  
26 health of California citizens through the elimination or reduction of toxic exposure from consumer  
27 products. She brings this action in the public interest pursuant to Health and Safety Code, section  
28 25249.7.



1           14. Defendants 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 Notices (defined *infra*) and will continue to  
4 occur into the future.

5           15. In manufacturing, importing, selling, and/or distributing Products, Defendants 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 Defendants placing Products into the stream of commerce. As  
10 such, Defendants intend that consumers will ingest Products, exposing them to acrylamide.

11           17. Defendants knew or should have known that the Products contained acrylamide and  
12 exposed individuals to acrylamide in the ways provided above. The Notices informed Defendants 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. Defendants' actions in this regard were deliberate and not accidental.

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

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

23           21. Individuals were exposed to acrylamide contained in the Products through direct  
24 ingestion 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. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
27 of 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).

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

3 1. Civil penalties in the amount of \$2,500 per day for each violation;

4 2. A preliminary and permanent injunction against Defendants from manufacturing,  
5 importing, selling, and/or distributing Products in California without providing a clear and reasonable  
6 warning as required by Proposition 65 and related Regulations;


7 3. Reasonable attorney's fees and costs of suit; and

8 4. Such other and further relief as may be just and proper.

9  
10 Respectfully submitted:

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12 Dated: June 12, 2020

**GLICK LAW GROUP, P.C.**

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15 By:   
16 Noam Glick  
17 Attorney for Plaintiff  
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