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16193741930 From: Noam Glick

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15	SUPERIOR COURT OF	THE STATE OF CALIFORNIA
16	IN AND FOR THE	COUNTY OF ALAMEDA
17	KIM EMBRY, an individual	Case No.: RG19012133
18 19	Plaintiff, v.	FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
20	THE WONDERFUL COMPANY LLC, a Delaware corporation, and DOES 1 through	(Health & Safety Code § 25249.6 et seq.)
21	100, inclusive,	
22	Defendants.	
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1	I. <u>INTRODUCTION</u>	
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 almonds ("Products").	
6	Defendants know and intend that customers will 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. Defendants 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 Defendants to sufficiently warn consumers	
19	in California before exposing them to Acrylamide in Products. (Health & Safety Code, § 25249.7(a).)	
20	Plaintiff also seeks civil penalties against Defendants for their violations of Proposition 65 along with	
21	attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)	
22	II.	
23	PARTIES	
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.	

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2 COMPLAINT 7. Defendant The Wonderful Company LLC a Delaware corporation ("Wonderful Co."),
 is a corporation organized and existing under the laws of Delaware. Defendant is registered to do
 business in California, and does business in the County of Alameda, within the meaning of Health and
 Safety Code, section 25249.11. Wonderful Co. manufactures, imports, sells, or distributes Products in
 California and Alameda County, including, for example Trader Joe's Dry Roasted and Salted Almonds
 and Wonderful Roasted and Salted Almonds.

8. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.
Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis
alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein alleged.
When ascertained, their true names shall be reflected in an amended complaint.

III. VENUE AND JURISDICTION

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

17 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
18 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
19 County. Defendants conducted and continue to conduct business in this County as it relates to Products.
20 11. Defendants have sufficient minimum contacts in the State of California or otherwise
21 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would

22 be consistent with traditional notions of fair play and substantial justice.

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IV. CAUSES OF ACTION

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

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

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

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 Notice informed Defendants of
 13 the presence of Acrylamide in the Products. Likewise, media coverage concerning Acrylamide and
 14 related chemicals in consumer products provided constructive notice to Defendants.

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

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

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

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

1	22. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation	
2	of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also	
3	appropriate pursuant to Health and Safety Code, section 25249.7(a).	
4	PRAYER FOR RELIEF	
5	Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:	
6	1. Civil penalties in the amount of \$2,500 per day for each violation;	
7	2. A preliminary and permanent injunction against Defendants from manufacturing,	
8	importing, selling, and/or distributing Products in California without providing a clear and reasonable	
9	warning as required by Proposition 65 and related Regulations;	
10	3. Reasonable attorney's fees and costs of suit; and	
11	4. Such other and further relief as may be just and proper.	
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13	Respectfully submitted:	
14	Dated: April 30, 2019GLICK LAW GROUP, PC	
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16 17	By: Noan Slich	
17	Noam Glick Attorney for Plaintiff	
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