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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

KIM EMBRY, an individual  
  
Plaintiff,  
  
v.  
  
PITA PIT BAKERY, INC., a California  
corporation, GLOBAL BAKERIES, LLC., a  
Delaware corporation, ATLAS MARKET, 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  
August 05, 2019  
CLERK OF  
THE SUPERIOR COURT  
By Xian-xii Bowie, Deputy  
CASE NUMBER:  
**RG19030015**

**I.**  
**INTRODUCTION**

1  
2           1.       This Complaint is a representative action brought by Plaintiff in the public interest of  
3 the citizens of the State of California (“the People”). Plaintiff seeks to remedy 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 pita bread that consumers toast or  
6 grill to a golden brown (“Products”). Defendants both instruct customers to, and reasonably anticipate  
7 that customers will, toast and/or grill their bread in this fashion. In other words, Defendants know and  
8 intend that customers will ingest Products containing Acrylamide.

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

14           3.       California identified and listed Acrylamide as a chemical known to cause cancer as early  
15 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February  
16 20, 2011.

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

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

**II.**  
**PARTIES**

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26           6.       Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the  
27 health of California citizens through the elimination or reduction of toxic exposure from consumer  
28

1 products. She brings this action in the public interest pursuant to Health and Safety Code, section  
2 25249.7.

3 7. Defendant PITA PIT BAKERY, INC., a California corporation (“Pita”), is a corporation  
4 organized and existing under the laws of California. Defendant is registered to do business in California,  
5 and does business in the County of Alameda, within the meaning of Health and Safety Code, section  
6 25249.11. Pita Pit Bakery, Inc. manufactures, imports, sells, or distributes Products in California and  
7 Alameda County, including, for example Authentic Pita Bread.

8 8. Defendant GLOBAL BAKERIES, LLC., a Delaware corporation (“Global”), is a  
9 corporation organized and existing under the laws of Delaware. Defendant is registered to do business  
10 in California, and does business in the County of Alameda, within the meaning of Health and Safety  
11 Code, section 25249.11. Global Bakeries, LLC. manufactures, imports, sells, or distributes Products in  
12 California and Alameda County, including, for example Plain Brick Oven Pita Bread.

13 9. Defendant ATLAS MARKET, a California corporation (“Atlas”), is a corporation  
14 organized and existing under the laws of California. Defendant is registered to do business in California,  
15 and does business in the County of Alameda, within the meaning of Health and Safety Code, section  
16 25249.11. Atlas Market manufactures, imports, sells, or distributes Products in California and Alameda  
17 County, including, for example Authentic Pita Bread and Plain Brick Oven Pita Bread.

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

22 **III.**  
23 **VENUE AND JURISDICTION**

24 11. California Constitution Article VI, Section 10 grants the Superior Court original  
25 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code  
26 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court  
27 has jurisdiction.  
28

1           12.       Venue is proper in Alameda County Superior Court pursuant to Code of Civil  
2 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
3 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

4           13.       Defendants have sufficient minimum contacts in the State of California or otherwise  
5 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would  
6 be consistent with traditional notions of fair play and substantial justice.

7                                                           **IV.**  
8                                                           **CAUSES OF ACTION**

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

11           14.       Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

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

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

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

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

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

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

12 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
13 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also  
14 appropriate pursuant to Health and Safety Code, section 25249.7(a).

15 **PRAYER FOR RELIEF**


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

- 17 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 18 2. A preliminary and permanent injunction against Defendants from manufacturing,  
19 importing, selling, and/or distributing Products in California without providing a clear and reasonable  
20 warning as required by Proposition 65 and related Regulations;
- 21 3. Reasonable attorney's fees and costs of suit; and
- 22 4. Such other and further relief as may be just and proper.

23 Respectfully submitted:

24 Dated: August 1, 2019

**GLICK LAW GROUP, PC**

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27 By:   
Noam Glick  
Attorney for Plaintiff