

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICE OF STEPHEN M. FRAYNE
Stephen M. Frayne (SBN 188938)
3090 Glascock St., STE 101
Oakland, CA 94601
Tel: 510-479-1081
Email: stevefrayne@yahoo.com

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
02/02/2022
Chad Finke, Executive Officer / Clerk of the Court
By: Y. Copes Deputy

Attorneys for Plaintiff
Shichu Yu

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

SHICHU YU, an individual

Plaintiff,

v.

KENOVER MARKETING CORP., a New
York corporation, and DOES 1 through 100,
inclusive,

Defendants.

Case No.: **22CV006412**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

1 where manufacturers and other responsible parties fail to do so. He brings this action in the public
2 interest pursuant to Health and Safety Code, section 25249.7.

3 7. Defendant KENOVER MARKETING CORP. ("KMC") is a corporation organized and
4 existing under the laws of New York. KMC is registered to do business in California, and does business
5 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. KMC
6 manufactures, imports, sells, or distributes the Products in California and Alameda County.

7 8. Plaintiff does not know the true names and/or capacities, whether individual, partners,
8 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
9 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
10 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and
11 thereon alleges that these defendants are responsible in whole or in part for Plaintiff's damages.

12 JURISDICTION AND VENUE

13 9. California Constitution Article VI, Section 10 grants the Superior Court original
14 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
15 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
16 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 continues 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 avails itself of the California market. Exercising jurisdiction over Defendants would be
22 consistent with traditional notions of fair play and substantial justice.

23 FIRST CAUSE OF ACTION

24 (Violation of Proposition 65 – Against all Defendants)

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

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

28 ///

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 Notice (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 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' action 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") as required by and in compliance with Proposition 65. Plaintiff
18 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
19 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
20 California of the health hazards associated with exposures to acrylamide contained in the Products.

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

23 21. Individuals exposed to acrylamide contained in Products through direct ingestion
24 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 as follows:

- 3 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
4 damages total a minimum of \$1,000,000;
- 5 2. A preliminary and permanent injunction against Defendants from manufacturing,
6 importing, selling, and/or distributing Products in California without providing a clear and reasonable
7 warning as required by Proposition 65 and related Regulations;
- 8 3. Reasonable attorney's fees and costs of suit; and
- 9 4. Such other and further relief as may be just and proper.
- 10

11 Dated: January 19, 2022

Respectfully submitted,

12 **LAW OFFICE OF STEPHEN M. FRAYNE**

13
14 By: _____

15 *Stephen M. Frayne*

16 Attorney for Plaintiff
17 *Shichu Yu*

18
19
20
21
22
23
24
25
26
27
28