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OF ORIGINAL FILED
Los Angeles Superior Court

AUG 26 2005

John A. Clarke, Executive Officer/Clerk
By S. Gabb Deputy
S. Gabb

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

15 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
BILL LOCKYER, Attorney General of the State of
16 California,

17 Plaintiff,

18 v.

19 FRITO-LAY, INC., PEPSICO, INC., H.J. HEINZ,
INC., KETTLE FOODS, INC., KFC
20 CORPORATION, LANCE, INC., THE PROCTER &
GAMBLE DISTRIBUTING COMPANY, THE
21 PROCTER & GAMBLE MANUFACTURING
COMPANY, WENDY'S INTERNATIONAL, INC.,
22 MCDONALD'S CORPORATION, BURGER KING
CORPORATION and DOES 1 through 100,

23 Defendants.

Case No.: **BC338956**
COMPLAINT FOR CIVIL
PENALTY AND INJUNCTIVE
RELIEF

Toxic Tort/Environmental (30)

24
25 **I. INTRODUCTION**

26 1. This complaint seeks an injunction to remedy defendants' failure to warn
27 consumers that certain processed potato products, such as potato chips, frozen hash browns, and
28 french fries sold by defendants expose consumers to acrylamide, a chemical known to the State

1 of California to cause cancer. Under the Safe Drinking Water and Toxic Enforcement Act of
2 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must
3 provide persons with a "clear and reasonable warning" before exposing them to such chemicals.

4 **II. PARTIES**

5 2. Plaintiffs are the People of the State of California, by and through the Attorney
6 General of California, Bill Lockyer. Health and Safety Code section 25249.7, subdivision (c),
7 provides that actions to enforce Proposition 65 may be brought by the Attorney General in the
8 name of the People of the State of California. Government Code section 12607 authorizes the
9 Attorney General to bring an action for equitable relief in the name of the People of the State of
10 California against any person to protect the natural resources of the State from pollution,
11 impairment, or destruction. Business and Professions Code section 17200 provides that actions
12 to prohibit unfair and unlawful business practices may be brought by the Attorney General in the
13 name of the People of the State of California.

14 3. Defendant Frito-Lay, Inc., is a business entity that manufactures products for sale
15 to consumers within the State of California, including, but not limited to, "Lay's Potato Chips"
16 and "Lay's Potato Crisps."

17 4. Defendant PepsiCo, Inc. is the owner of Frito-Lay, Inc., a business entity that
18 manufactures products for sale to consumers within the State of California, including, but not
19 limited to, "Lay's Potato Chips" and "Lay's Potato Crisps."

20 5. Defendant H.J. Heinz, Inc., is a business entity that manufactures products for sale
21 to consumers within the State of California, including, but not limited to, frozen potato products
22 such as "Ore-Ida" brand french fries.

23 6. Defendant Kettle Foods, Inc., is a business entity that manufactures products for
24 sale to consumers within the State of California, including, but not limited to, "Kettle Chips"
25 potato chips.

26 7. Defendant KFC Corporation is a business entity that manufactures and sells
27 products to consumers within the State of California, including, but not limited to, "Potato
28 Wedges."

1 render the exercise of jurisdiction over them by the California courts consistent with traditional
2 notions of fair play and substantial justice.

3 17. Venue is proper in this Court because the cause arises in the County of Los
4 Angeles, where some of the violations of law have occurred.

5 IV. STATUTORY BACKGROUND

6 A. Proposition 65

7 18. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative
8 statute passed as "Proposition 65" by a vote of the People in November of 1986.

9 19. The warning requirement of Proposition 65 is contained in Health and Safety
10 Code section 25249.6, which provides:

11 No person in the course of doing business shall knowingly and
12 intentionally expose any individual to a chemical known to the state to
13 cause cancer or reproductive toxicity without first giving clear and
reasonable warning to such individual, except as provided in Section
25249.10

14 20. Proposition 65 also establishes a procedure by which the state is to develop a list
15 of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code
16 § 25249.8.) No warning need be given concerning a listed chemical until one year after the
17 chemical first appears on the list. (Id., § 25249.10, subd. (b).)

18 21. Proposition 65 provides that any person "violating or threatening to violate" the
19 statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)
20 To "threaten to violate" is defined to mean "to create a condition in which there is a substantial
21 probability that a violation will occur." (Id., § 25249.11, subd. (e).) In addition, violators are
22 liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action.
23 (Id., § 25249.7, subd. (b).) Actions to enforce the law "may be brought by the Attorney General
24 in the name of the People of the State of California or by any district attorney". (Id., § 25249.7,
25 subd. (c).)

26 22. Implementing regulations promulgated by the Health and Welfare Agency provide
27 that the warning method "must be reasonably calculated, considering the alternative methods
28 available under the circumstances, to make the warning message available to the individual prior

1 to exposure." (Cal. Code Regs., tit. 22, § 12601(a).)

2 23. The regulations prescribe certain types of warnings that are considered valid,
3 including: (A) warnings on labels, (B) identification at the retail outlet through "shelf labeling,
4 signs, menus, or a combination thereof," and (C) " a system of signs, public advertising
5 identifying the system and toll-free information services, that provides clear and reasonable
6 warnings." (Cal. Code Regs., tit. 22, §§ 12601(b)(1)(A)-(C).)

7 **B. The Unfair Competition Act**

8 24. California Business and Professions Code section 17200 provides that "unfair
9 competition shall mean and include unlawful, unfair or fraudulent business practice." Section
10 17203 of the Business and Professions Code provides that "(a)ny person performing or proposing
11 to perform an act of unfair competition within this state may be enjoined in any court of
12 competent jurisdiction."

13 25. Section 17206(a) provides that any person violating Section 17200 "shall be liable
14 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,
15 which shall be assessed and recovered in a civil action brought in the name of the people of the
16 State of California by the Attorney General or by any district attorney." Under section 17205,
17 these penalties are "cumulative to each other and to the remedies or penalties available under all
18 other laws of this state."

19 **V. FACTS**

20 26. Acrylamide was listed under Proposition 65 as a chemical known to the State of
21 California to cause cancer on May 1, 1990. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

22 27. Lay's Potato Chips, Lay's Potato Crisps, Kettle Chips, Cape Cod Potato Chips,
23 Pringles potato chips, frozen potato products sold by H.J. Heinz, french fries sold by Wendy's
24 International, french fries sold by McDonald's Corporation, french fries sold by Burger King
25 Corporation, and "Potato Wedges" sold by KFC Corporation (hereinafter "the Potato Products"),
26 all contain acrylamide.

27 28. The acrylamide in the Potato Products is ingested by persons who consume those
28 products in their intended manner. Plaintiffs are informed and believe, and based on that

1 information and belief allege, that each defendant has known since at least July 1, 2002, that the
2 Potato Products that it sells, distributes, or manufactures, contain acrylamide and cause
3 consumers of the Potato Products to be exposed to acrylamide.

4 29. Each defendant has failed to provide consumers of the Potato Products with a
5 clear and reasonable warning that they are being exposed to a chemical known to the State of
6 California to cause cancer.

7 **VI. FIRST CAUSE OF ACTION**

8 (For Violation of Proposition 65)

9 30. Paragraphs 1 through 29 are realleged as if fully set forth herein.

10 31. Plaintiffs are informed and believe, and based on such information and belief
11 allege, that each defendant employs ten or more persons.

12 32. By committing the acts alleged above, each defendant has, in the course of doing
13 business, knowingly and intentionally exposed individuals to acrylamide, a chemical known to
14 the State of California to cause cancer, without first giving clear and reasonable warning to such
15 individuals, within the meaning of Health and Safety Code section 25249.6.

16 33. Said violations render each defendant liable to plaintiff for civil penalties of up to
17 \$2,500 per day for each violation.

18 **VII. SECOND CAUSE OF ACTION**

19 (For Unlawful Business Practices)

20 34. Paragraphs 1 through 33 are realleged as if fully set forth herein.

21 35. By committing the acts alleged above, each defendant has engaged in unlawful
22 business practices which constitute unfair competition within the meaning of Business and
23 Professions Code section 17200.

24 36. Said violations render each defendant liable to plaintiff for civil penalties of up to
25 \$2,500 for each violation.

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27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs pray that the Court:

3 1. Pursuant to the First and Second Causes of Action, grant civil penalties according
4 to proof;

5 2. Pursuant to Health and Safety Code section 25249.7, and Business and
6 Professions Code sections 17203, enter such preliminary injunctions, permanent injunctions, or
7 other orders prohibiting each defendant from exposing persons within the State of California to
8 acrylamide without providing clear and reasonable warnings, as plaintiffs shall specify in further
9 application to the court;

10 3. Award plaintiffs their costs of suit;

11 4. Grant such other and further relief as the court deems just and proper.

12 Respectfully submitted,

13 Dated: 8/26/05

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