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CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

AUG 03 2005-

J. SUNGA, Executive Officer of Plaintiff

By **J. SUNGA**, Plaintiff

SUPERIOR- COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES--UNLIMITED

ENVIRONMENTAL WORLD  
WATCH, INC., in the public interest,

Plaintiff,

. v.

H.J. HEINZ COWANY, WENDY'S INTERNATIONAL, INC., KFC OF AMERICA, INC., and DOES I -100,

Defendants.

Case No.

**BC337619**

COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986 (Health & Saf Code, §§ 25249.5, et seq.)

**COPY**

Plaintiff ENVIRONMENTAL WORLD WATCH, INC. ("EWW") is a corporation qualified to do business in the State of California. It brings this action in the public interest as defined under Health & Saf Code, § 25249.7, subd. (d).

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COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC  
ENFORCMENT ACT OF 1986 (HEALTH & SAF. CODE, H 25249.5, ET SEQ)

1 2. Defendant H.J. HEINZ COMPANY ("Heinz") is and at all times mentioned herein was  
2 qualified to do business in California, and at all times mentioned herein has conducted  
3 business within California, including the county of Los Angeles.

4  
5 3. Defendant VVIENDY'S INTERNATIONAL, INC. ("Wendy's") is and at all times  
6 mentioned herein was qualified to do business in California, and at all times mentioned  
7 herein has conducted business within California, including the county of Los Angeles.

8 4. Defendant KFC OF AMERICA, INC. ("KFC"), is and at all times mentioned herein was  
9 qualified to do business in California, and at all times mentioned herein has conducted  
10 business within California, including the county of Los Angeles.  
11

12 5. EWW is ignorant of the true names and capacities of defendants Does 1-100, and  
13 therefore sues these defendants by such fictitious names. EWW will amend this

14 complaint to allege their true names And capacities when ascertained. EWW is informed,  
15 believes, and thereon alleges that each fictitiously named defendant is responsible in  
16 some manner for the occurrences herein alleged and the damages caused thereby.  
17

18 6. At all times mentioned herein, "Defendants" include Heinz, Wendy's, KFC, as well as  
19 Does 1-100.  
20

21 7. At all times mentioned each Defendant was a "[p]erson in the course of doing business"  
22 within the meaning of Health & Saf Code, § 25249.11, subd. (b). EWW is informed,  
23 believes, and thereon alleges that at all times mentioned herein each defendant had ten or  
24 more ernployqes.

25 8. The Court has jurisdiction over this lawsuit pursuant to Cal. Const., art. VI, § 10, which  
26 grants the Superior Court original jurisdiction in all causes except those given by statute  
27 to other trial courts.  
28

FIRST CAUSE OF ACTION

(PY EWW AGAINST H.J. HEINZ COMPANY, WENDY'S INTERNATIONAL, INC.,  
Y-FC OF AMERICA, INC. **and DOES 1-100 FOR VIOLATION OF PROPOSITION 65**  
**(Health & Saf. Code, §§ 25249.5, et seq.)**

9. EWW repeats and incorporates by reference the previous paragraphs of this complaint as though fully set forth herein.
10. Heinz manufactures and/or distributes, including but not limited to, Ore-Ida Brand French Fries for consumers in California. EWW is informed, believes, and thereon alleges that from September 1991 to the present Heinz knowingly and intentionally exposed persons who consume its Ore-Ida Brand French Fries, sold in California, to acrylamide, a chemical contained in Ore-Ida Brand French Fries and listed under Proposition 65 to cause cancer, without first giving clear and reasonable warning of such to the persons exposed or the persons who purchased the Ore-Ida Brand French Fries. The persons exposed are persons who consume Ore-Ida Brand French Fries by eating them. Heinz thereby violated Health & Saf Code, §§ 25249.5, et seq ("Proposition 65"). The route of exposure was through ingestion. not first give clear and reasonable warning in any manner or in any medium to persons in California who consume its Ore-Ida Brand French Fries that its Ore-Ida Brand French Fries contain acrylamide and the acrylamide contained in its Ore-Ida Brand French Fries causes cancer before Heinz knowingly and intentionally exposed such individuals to the acrylamide contained in its Ore-Ida Brand French Fries. Heinz packaged its products without the warnings required by Cal. Code Regs., tit. 22, § 12601, which would have supplied the persons who actually ate the products and suffered. exposure to acrylamide with important heath information required by said regulation.

11. Heinz did

COWLAIN FOR

1 The exposures took place off Heinz' properties and away from any source of conspicuous  
2 warning such as a sign at the point of sale.  
3

4 12. Wendy's is and at all times mentioned herein was engaged in the fast food restaurant  
5 business in California, selling fast foods to millions of consumers throughout California.  
6 EWW is informed, believes, and thereon alleges that from September 1991 to the present  
7 Wendy's knowingly and intentionally exposed persons who consume French fries, a fried  
8 potato product, cooked and served at Wendy's restaurants in California, to acrylamide, a  
9 chemical contained in Wendy's French fries and listed under Proposition 65 to cause  
10 cancer, without first giving clear and reasonable warning of such to the persons exposed  
11 or the persons who purchased French fries. The persons exposed are persons who  
12 consume Wendy's French fries by eating them. Wendy's thereby violated ("Proposition  
13 65"). The route of exposure was through ingestion.  
14

15 13. Wendy's did not first give clear and reasonable warning in any manner or in any medium  
16 to persons in California who consume its French fries that its French fries contain  
17 acrylamide and the acrylamide contained in its French fries causes cancer before  
18 Wendy's knowingly and intentionally exposed such individuals to the acrylamide  
19 contained in its French fries. Wendy's packaged its products without the warnings  
20 required by Cal. Code Regs., tit. 22, § 12601, which would have supplied the persons  
21 who actually ate the products and suffered exposure to acrylamide with important health  
22 information required by said regulation. The exposures took place both on and off  
23 Wendy's' properties, the latter of which lacked any source of conspicuous warning such  
24 as a sign at the point of sale.  
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- 1 14. KFC is and at all times mentioned herein was engaged in the fast food restaurant business  
2 in California, selling fast foods to millions of consumers throughout California. EWW is  
3 informed, believes, and thereon alleges that from September 1991 to the present KFC  
4 knowingly and intentionally exposed persons who consume "Potato Wedges," a fried  
5 potato product, cooked and served at KFC restaurants in California, to acrylamide, a  
6 chemical contained in KFC "Potato Wedges" and listed under Proposition 65 to cause  
7 cancer, without first giving clear and reasonable warning of such to the persons exposed  
8 or the persons who purchased the "Potato Wedges." The persons exposed are persons  
9 who consume KFC "Potato Wedges" by eating them. KFC thereby violated Proposition  
10 65. The route of exposure was through ingestion.
- 11 15. KFC did not first give clear and reasonable warning in any manner or in any medium to  
12 persons in California who consume its "Potato Wedges" that its "Potato Wedges" contain  
13 acrylamide and the acrylamide contained in its "Potato Wedges" causes cancer before  
14 KFC knowingly and intentionally exposed such individuals to the acrylamide contained  
15 in its "Potato Wedges". KFC packaged its products without the warnings required by  
16 Cal. Code Regs., tit. 22, § 1260 1, which would have supplied the persons who actually  
17 ate the products and suffered exposure to acrylamide with important health information  
18 required by said regulation. The exposures took place both on and off KFC's properties,  
19 the latter of which lacked any source of conspicuous warning such as a sign at the point  
20 of sale.
- 21 16. On January 1, 1990, acrylamide was placed on the Governor's Proposition 65 list as a  
22 carcinogenic chemical known to cause cancer. (Cal. Code Regs., tit 22, § 12000, subd.  
23 (b).) Pursuant to Health & Saf Code, § 25249.9, twenty months after first appearing on  
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28

1 the Governor's Proposition 65 list, acrylamide became subject to Proposition 65 warning  
2 requirements.  
3

4 17. Exposures to acrylamide occurred through ingestion every time a person consumed by  
5 eating the acrylamide-containing Ore-Ida Brand French Fries manufactured and/or  
6 distributed by Heinz, which consumers had purchased between September 1991 and the  
7 present.

8 18. Exposures to acrylamide occurred through ingestion every time a person consumed by  
9 eating the acrylamide-containing French fries consumers had purchased from Wendy's  
10 restaurants between September 1991 and the present.

11 19. Exposures to acrylamide occurred through ingestion every time a person consumed by  
12 eating the acrylamide-containing "Potato Wedges" consumers had purchased from KFC  
13 restaurants between September 1991 and the present.  
14

15 20. On June 26, 2002, EWW sent a notice of alleged violations of Proposition 65 subject to a  
16 private action, as described in the foregoing paragraphs, to the Attorney General and  
17 applicable district attorneys and city attorneys in whose jurisdictions the violations  
18 allegedly occurred, and to the alleged violator, Heinz.  
19

20 21. On June 26, 2002, and in March of 2003, EWW sent a notice of alleged violations of  
21 Proposition 6~ subject to a private action, as described in the foregoing paragraphs, to the  
22 Attorney General and applicable district attorneys and city attorneys in whose  
23 jurisdictions the violations allegedly occurred, and to the alleged violator, Wendy's.  
24

25 22. . On June 26, 2002, and in March of 2003, EWW sent a notice of alleged violations of  
26 Proposition 65 subject to a private action, as described in the foregoing paragraphs, to the  
27

1 Attorney General and applicable district attorneys and city attorneys in whose  
2 jurisdictions the violations allegedly occurred, and to the alleged violator, KFC.  
3

4 23. EWW gave these notices, and filed this action, more than twenty months after acrylamide

5 first appeared on the Governor's Proposition 65 list, and after acrylamide became subject  
6 to Proposition 65 warning requirements.

7 24. EWW's notices of the alleged violation included certificates of merit executed by the  
8 attorney for the noticing party, EWW. The certificate of merit stated that the attorney for  
9

10 EWW who executed the certificate had consulted with at least one person with relevant

11 and appropriate expertise who had reviewed data regarding the exposures to acrylamide  
12 that are the subjects of the action. Based on that information, the attorney for EWW who  
13 executed the certificate believed there was a reasonable and meritorious case for this  
14

15 private action. The attorney for EWW attached to the **certificate of merit served on the**

16 Attorney General information sufficient to establish the basis of the certificate of merit.

17 25. EWW is commencing this action more than sixty days from the date that EWW gave  
18 notice of the alleged violations to Defendants, to the Attorney General, and to applicable  
19 district attorneys and city attorneys in whose jurisdictions the violations allegedly  
20

21 occurred.

22 26. EWW is informed, believes, and thereon alleges that neither the Attorney General, nor  
23 any applicable district attorney or city attorney has commenced and is diligently  
24 prosecuting an action against the violation.

25 27. At all times relevant to this action, Heinz knew it was exposing its customers who  
26

27 purchased and thereafter consumed its Ore-Ida Brand French Fries to acrylamide without

28 first giving clear and reasonable warning of such to the persons exposed or the persons



1 who purchased its Ore-Ida Brand French Fries. Therefore, during the times mentioned  
2 herein, Heinz, without first giving clear and reasonable warning, knowingly and  
3  
4 intentionally exposed consumers of its Ore-Ida Brand French Fries to acrylamide, a toxic  
5 chemical known to the State of California to cause cancer.

6 28. At all times relevant to this action, Wendy's knew it was exposing persons who  
7 consumed its French fries purchased from its restaurants to acrylamide without first  
8 giving clear and reasonable warning of such to the persons exposed or the persons who  
9  
10 purchased the French Fries. Therefore, during the times mentioned herein, Wendy's,  
11 without first giving clear and reasonable warning, knowingly and intentionally exposed  
12 consumers of its French fries to acrylamide, a toxic chemical known to the State of  
13 California to cause cancer.

14 29. At all times relevant to this action, KFC knew it was exposing persons who consumed its  
15  
16 "Potato Wedges" purchased from its restaurants to acrylamide without first giving clear  
17 and reasonable warning of such to the persons exposed or the persons who purchased the  
18 "Potato Wedges." Therefore, during the times mentioned herein, KFC, without first  
19 giving clear and reasonable warning, knowingly and intentionally exposed consumers of  
20  
21 its "Potato Wedges" to acrylamide, a toxic chemical known to the State of California to  
22 cause cancer.

23 30. EWW's allegations concern a "consumer product exposure." A "consumer product  
24 exposure" is an exposure that results from a person's acquisition, purchase, storage,  
25 consumption, or other reasonably foreseeable use of a consumer good. Ore-Ida Brand  
26  
27 French Fries, French fries, and "Potato Wedges" are consumer products. Since

1 Defendants' products contain acrylamide, the reasonably foreseeable use and  
2 consumption of said products resulted in exposures to acrylamide through ingestion.  
3

4 31. Recent scientific studies released by the Office of Environmental Health Hazard

5 Assessment ("OEHHN") have revealed that even at the most conservative "lower bound"  
6 estimates of acrylamide intake, the level of exposure to acrylamide through the ingestion  
7 of fried potato products is approximately 25 times greater than the no significant risk  
8 levels (NSRLs), or the allowed 'safe harbor', for acrylamide. The current safe harbor or  
9

10 NSRL of acrylamide intake is .2 gg/day. The NSRL is the daily intake level calculated to  
11 result in one excess case of cancer in an exposed population of 100,000, assuming  
12 lifetime (70- year) exposure at the level in question.

13 32. At all times relevant to this action, Defendants knew they were exposing persons who  
14 consumed their consumer products to acrylamide without first giving clear and  
15 reasonable warning of such to the persons exposed or the persons who purchased the  
16 consumer products and Defendants intended such conduct.  
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PRAYER FOR RELIEF

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EWW demands against each defendant as follows:

- 1. A permanent injunction;
- 2. Penalties pursuant to Health & Saf Code, § 25249.7, subd. (b) of \$2,500.00 per day per violation;
- 3. Costs of suit;
- 4. Reasonable attorney's fees and costs; and
- 5. Any further relief that the court may deem just and equitable.

Dated:

YEROUSHALMI & ASSOCIATES

Reu6e~ Yeroushalmi  
Attorneys for Plaintiff,  
Environmental World Watch