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25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26 **FOR THE COUNTY OF LOS ANGELES**

27 ENVIRONMENTAL LAW
28 FOUNDATION,
Individually and on Behalf of the General
Public,

Plaintiff,

vs.

THE PROCTER & GAMBLE DISTRIBUTING
COMPANY; THE PROCTER & GAMBLE
MANUFACTURING COMPANY, and DOES
1-50,

Defendants.

CASE NO. **BC338895**
**COMPLAINT FOR CIVIL PENALTIES,
STATUTORY, EQUITABLE AND
INJUNCTIVE RELIEF BASED UPON:**
Violation of Cal. Health & Safety Code
§25249.6 *et seq.*

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

AUG 26 2005

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

1 Plaintiff, by its attorneys, brings this action on its own behalf and in the public interest
2 on information and belief, except those allegations which pertain to the named Plaintiff or its
3 attorneys (which are alleged personal knowledge), and hereby alleges as follows:

4 I

5 **Introduction**
6 **(The Hazards of Acrylamide)**

7 1. This action seeks, among other remedies, restitution, civil penalties and
8 injunctive relief to redress the actions of Defendants now resulting in widespread exposure of
9 men and women to acrylamide, a known carcinogen, threatening their health and well being.
10 Specifically, Plaintiff challenges Defendants' manufacture, distribution, promotion and sale
11 of potato chips and/or crisps that contain acrylamide, resulting in human exposure to
12 acrylamide without prior warning, presenting a risk of developing cancer. Defendants' actions,
13 including, but not limited to, their failure to provide prior warnings as required by law, violate
14 California Health & Safety Code §25249.6, *et seq.*

15 2. On January 1, 1990, acrylamide was listed as a known carcinogen pursuant to
16 Proposition 65. Proposition 65 requires that consumers must be warned before they are
17 exposed to chemicals that cause birth defects and/or reproductive harm. (The Safe Drinking
18 Water and Toxic Enforcement Act, California Health and Safety Code §25249.6, *et seq.*, also
19 known as "Proposition 65").

20 3. Research has shown that acrylamide levels in potato chips and/or crisps can be
21 reduced in a number of ways including, but not limited to: (1) choosing different varieties of
22 potatoes; (2) avoiding sugar dips/coatings in partially cooked products; (3) increasing product
23 moisture; (4) lowering pH; (5) storing products at higher temperatures; (6) changing
24 temperature/cooking regimes; (7) cooking products at lower temperatures; (8) adding
25 asparaginase; (9) replacing ammonium; and (10) changing cooking oils.

26 4. By exposing consumers to acrylamide without any warning, Defendants have
27 violated and will continue to violate Proposition 65. Plaintiff is also entitled to injunctive
28 relief to compel Defendants to:

1 (a) Comply with the requirements of Proposition 65 in the sale and distribution
2 of their potato chips and/or crisps, including its requirement that the ultimate consumers of
3 Defendants' potato chips and/or crisps be provided with a clear and reasonable warning that
4 the ingestion of Defendants' products results in exposure to acrylamide, a known carcinogen;
5 and,

6 (b) Undertake an immediate and comprehensive public information program to
7 alert all consumers (past, present, or future) of Defendant's potato chips and/or crisps at issue
8 herein of the inherent risk of acrylamide exposure in these products.

9 Plaintiff is therefore entitled to civil penalties.

10 **Parties**

11 5. Plaintiff ENVIRONMENTAL LAW FOUNDATION ("ELF") is a California
12 nonprofit organization founded on Earth Day in 1991. ELF has a longstanding interest in
13 reducing health hazards to the public posed by acrylamide, and particularly to protect those
14 with the least choice and greatest vulnerability to toxic risks; children, inner city dwellers, and
15 workers. ELF is dedicated to the preservation and enhancement of human health and the
16 environment. ELF brings this action on its own behalf, and pursuant to Health and Safety Code
17 §25249.7(d).

18 6. The Procter & Gamble Distributing Company ("P&G") is an Ohio Corporation
19 with its principal place of business located at 1 Procter & Gamble Plaza Cincinnati, OH 45202.
20 P&G sells, manufactures, and/or distributes potato chips and/or crisps including, Pringles
21 Sweet Mesquite BBQ, Pringles Snack Stacks (Original Flavor), and Pringles Snack Stacks
22 (Pizzalicious Flavor).

23 7. The Procter & Gamble Manufacturing Company ("P&G") is an Ohio
24 Corporation with its principal place of business located at 1 Procter & Gamble Plaza
25 Cincinnati, OH 45202. P&G sells, manufactures, and/or distributes potato chips and/or crisps
26 including, Pringles Sweet Mesquite BBQ, Pringles Snack Stacks (Original Flavor), and
27 Pringles Snack Stacks (Pizzalicious Flavor).

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1 distribution of their products in California to render the exercise of jurisdiction by the
2 California courts permissible under traditional notions of fair play and substantial justice.

3 13. Venue is proper in this Court because the products at issue are advertised,
4 promoted, sold and used in this County, a substantial portion of the transactions complained
5 of herein occurred here, contracts relating to the purchase of this product were entered into,
6 made and were to be performed in this County, and Defendants have received substantial
7 compensation from the sale of the product at issue in this County by doing business here and
8 making numerous misrepresentations which have had an effect in this County.

9 14. With respect to violations of Health and Safety Code §25249.6, *et seq.*, on June
10 16, 2005, pursuant to Health and Safety Code §25249.7, Plaintiff mailed/served appropriate
11 notices of the violations of §25249.6 of Proposition 65 by P&G, as alleged herein. The
12 "Notices of Violation of Proposition 65" were mailed to each of these Defendants, as well as
13 to the California Attorney General, the District Attorney of every county in California, and the
14 City Attorneys of any cities with populations according to the most recent decennial census
15 of over 750,000 in whose jurisdiction some of the violations of Proposition 65 occurred. Each
16 notice included a certificate of merit executed by Plaintiff's attorneys stating that the person
17 executing the certificate had consulted with one or more persons with relevant and appropriate
18 experience or expertise who has reviewed the facts, studies, or other data regarding exposure
19 to acrylamide, and that, based on that information, the person executing the certificate believes
20 there is a reasonable and meritorious case for this private action. The factual information
21 sufficient to establish the basis of the certificate of merit has been attached to the certificate
22 of merit served on the California Attorney General.

23 15. None of these public prosecutors has commenced or is diligently prosecuting an
24 action against the violations at issue herein, although the notice period provided in §25249.7
25 has elapsed since such notice was provided.

26 16. ELF is a non-profit organization acting as a private attorney general as
27 authorized by Health and Safety Code §25249.7. In this capacity, ELF does not have Article
28 III standing as ELF has not suffered any distinct and/or palpable injury. The statutory right to

1 act as a private attorney general does not confer injury on ELF to satisfy Article III standing.
2 *As You Sow v. The Sherwin-Williams Company* (1993 ND Cal.) Lexis 18310, 6.

3 STATUTORY AND REGULATORY BACKGROUND

4 17. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative
5 statute passed as Proposition 65 by a vote of the People in 1986.

6 18. Proposition 65 provides the circumstances under which persons must be warned
7 before they are exposed to chemicals/metals that cause cancer, birth defects, or other
8 reproductive harm. Health and Safety Code §25249.6 states the warning requirement:

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

12 19. Proposition 65 establishes a procedure by which the Governor lists chemicals
13 known to the state to cause cancer. Health and Safety Code §25249.8. Pursuant to this authority,
14 on January 1, 1990, acrylamide was listed as a known carcinogen. The state of California has
15 established the no significant risk level for acrylamide at .2 micrograms/day. Cal. Code Regs.,
16 tit.22, §12705.

17 20. The warning requirement under Proposition 65 for a given chemical goes into
18 effect one year after the Governor places that chemical on the list. Health and Safety Code
19 §25249.10(b). Therefore, acrylamide became subject to a Proposition 65 warning on January
20 1, 1991.

21 FACTS

22 21. Potato chips and/or crisps are a food item consumed regularly by a significant
23 portion of the population. They are a common side item served with a wide variety meals or
24 eaten alone as a snack.

25 22. Defendants manufacture, sell, and/or distribute a variety of potato chips and/or
26 crisps labeled, marketed, and intended for human consumption, including, but not limited to
27 those listed in paragraph 6, 7 *supra*. These potato chips and/or crisps are manufactured,
28

1 distributed, and/or sold in the State of California for the purpose of distribution and retail in
2 California.

3 23. On or about April 24, 2002, researchers at the Swedish National Food
4 Administration and Stockholm University reported that acrylamide was contained in a variety
5 of fried and/or baked foods including, but not limited to, potato chips and/or crisps.

6 24. On or about 2002, the United States Food and Drug Administration (the "FDA")
7 began conducting public meetings regarding the presence of elevated levels of acrylamide in
8 various foods including, but not limited to potato chips and/or crisps. Also during this period,
9 the FDA released certain information regarding the fact that acrylamide was contained in a
10 variety of foods including, but not limited to, potato chips and/or crisps and, more specifically,
11 contained in brands of Lay's potato chips and/or crisps, Kettle potato chips, and Pringles
12 potato chips and/or crisps.

13 25. Based upon such information and belief, plaintiffs allege that at all relevant time
14 periods, Defendants and each of them possessed information including, but not limited to, the
15 information referenced in paragraphs 23 and 24, *supra*, which confirmed that acrylamide was
16 contained in a variety of foods including potato chips and/or crisps and, more specifically,
17 contained in brands of Lay's potato chips and/or crisps, Kettle potato chips, and Pringles
18 potato chips and/or crisps.

19 26. Based upon such information and belief, plaintiff alleges that at all relevant time
20 periods, Defendants and each of them, knew that acrylamide has been, and continues to be,
21 identified by the State of California as a known carcinogen subject to Proposition 65.

22 27. The potato chips and/or crisps at issue in this Complaint contain acrylamide
23 which results in human exposure to acrylamide upon its consumption and/or ingestion without
24 prior warning.

25 28. Plaintiff is informed and believes and thereon alleges that the Defendants knew
26 that the foreseeable use of their potato chips and/or crisps results in exposure to acrylamide,
27 and that the levels of acrylamide exposed exceed the acrylamide exposure levels(*i.e.*, .2
28 micrograms per day) which trigger Proposition 65's warning requirements.

1 are liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil
2 action. §25249.7(b).

3 35. Defendants have engaged and continue to engage in conduct which violates
4 Health and Safety Code §25249.6. This conduct includes the manufacturing, packaging,
5 marketing, distributing and selling of potato chips and/or crisps the foreseeable use of which
6 results in exposing the public to acrylamide, known to the State of California to be a
7 carcinogen, without first providing a clear and reasonable warning pursuant to Health and
8 Safety Code §§25249.6 and 25249.11(f). Defendants have, therefore, in the course of doing
9 business, knowingly and intentionally exposed individuals to a chemical known to the State
10 of California to be a carcinogen without first providing a clear and reasonable warning. The
11 exposure is intentional because it is the result of deliberate acts of Defendants in arranging the
12 sale of their products to consumers.

13 36. By the above described acts, Defendants are liable, pursuant to Health and
14 Safety Code §25249.7(b), for a civil penalty of up to \$2,500.00 per day per individual
15 exposure to acrylamide through Defendants potato chips and/or crisps listed in paragraph 6,
16 7, *supra*.

17 37. By committing the acts alleged herein, the Defendants have caused irreparable
18 harm for which there is no plain, speedy, or adequate remedy at law. In the absence of
19 equitable relief, the general public will continue to be involuntarily exposed to acrylamide
20 which is contained in Defendants' potato chips and/or crisps listed in paragraph 6, 7 *supra*,
21 creating substantial risk of irreparable harm.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for the following relief:

24 A. A temporary restraining order, preliminary and permanent injunction enjoining
25 the Defendants, their agents, employees, assigns, and all persons acting in concert or
26 participating with them from:

27 (1) Selling and distributing their potato chips which contain acrylamide in
28 California, without first providing, to the ultimate consumers and users, a clear and reasonable

1 warning that the foreseeable consumption of such potato chips results in exposure to
2 acrylamide, a chemical known to the State of California to be a carcinogen;

3 (2) Failing to undertake a court-approved public information campaign to
4 warn and inform the general public that consumption of Defendants' potato chips which
5 contain acrylamide results in exposure to acrylamide, a chemical known to the State of
6 California to be a carcinogen and identifying steps that may be taken to reduce such exposure;

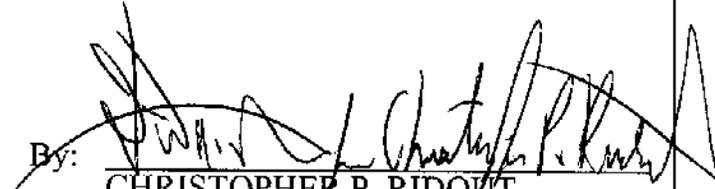
7 B. An award of statutory penalties of \$2500.00 for each violation of Proposition
8 65 throughout the State of California;

9 C. Reasonable attorneys' fees and costs; and,

10 D. Such other and further relief as this Court may deem necessary and proper.

11
12 DATED: August 25, 2005

ROSE, KLEIN & MARIAS LLP

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14
15 By: 
16 CHRISTOPHER P. RIDOUT
Attorneys for Plaintiff

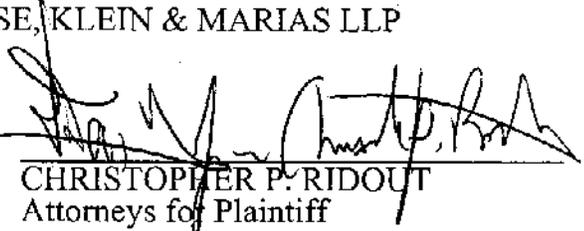
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on each and every cause of action.

DATED: August 25, 2005

ROSE, KLEIN & MARIAS LLP

By: 

CHRISTOPHER P. RIDOUT
Attorneys for Plaintiff

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