

**SUMMONS  
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

Homestat Farm, Ltd., an Ohio Limited Liability Corporation, and DOES 1 through 10, inclusive  
*COMPANY (CML)*

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**FILED**  
CIVIL BUSINESS OFFICE 5  
CENTRAL DIVISION  
2006 APR -7 P 4:10  
CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA.

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Robert Wilkinson, an individual

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):  
San Diego County Superior Court  
330 West Broadway

CASE NUMBER:  
(Número del Caso)

**GIC 864017**

San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Fletcher W. Paddison (077676) 619-235-4040 619-231-8796

Ross, Dixon & Bell, LLP  
550 West "B" Street, Ste. 400  
San Diego, Ca 92101

DATE:  
(Fecha) **APR 07 2006**

Clerk, by C. BOYLE, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

[SEAL]

1 ROSS, DIXON & BELL, LLP  
Fletcher W. Paddison (77676)  
2 Jason S. Hartley (192514)  
Lou M. Segreti (234407)  
3 550 West B Street, Suite 400  
San Diego, California 92101-3599  
4 Telephone: (619) 235-4040  
Facsimile: (619) 231-8796

5 Attorneys for Plaintiff  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 ROBERT WILKINSON, <sup>Cum</sup> AN INDIVIDUAL

12 Plaintiff,

13 v.

14 HOMESTAT FARM, LTD., an Ohio  
Limited Liability Company, and DOES 1  
15 through 10, inclusive,

16 Defendants.

Case No. **GIC 864017**

**COMPLAINT FOR CIVIL PENALTIES,  
STATUTORY, EQUITABLE AND  
INJUNCTIVE RELIEF BASED UPON:**

Violation of Cal. Health & Safety Code  
§25249.6 *et seq.*

***Jury Trial Requested***

17  
18 Plaintiff alleges:

19 **INTRODUCTION**

20 1. This action seeks, among other remedies, restitution, civil penalties and injunctive  
21 relief to redress the actions of Defendants now resulting in widespread exposure of men and  
22 women to acrylamide, a known carcinogen, potentially threatening their health and well being.  
23 Specifically, Plaintiff challenges Defendants' manufacture, distribution, promotion and sales of  
24 Wheatena, which contains acrylamide, resulting in human exposure to acrylamide without prior  
25 warning, presenting a risk of developing cancer. Defendants' actions, including, but not limited  
26 to, its failure to provide prior warnings as required by law, violate California Health & Safety  
27 Code §25249.6, *et seq.*

28 2. On January 1, 1990, acrylamide was listed as a known carcinogen pursuant to

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CIVIL BUSINESS OFFICE 5  
CENTRAL DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

1 Proposition 65. Proposition 65 requires that consumers be warned before they are exposed to  
2 chemicals that cause birth defects and/or reproductive harm. (The Safe Drinking Water and Toxic  
3 Enforcement Act, California Health and Safety Code §25249.6, *et seq.*, also known as  
4 “Proposition 65”).

5 3. By exposing consumers to acrylamide without any warning, Defendants have  
6 violated and will continue to violate Proposition 65. Plaintiff is therefore entitled to injunctive  
7 relief to compel Defendant to:

8 (a) Comply with the requirements of Proposition 65 in the sale and distribution  
9 of Wheatena, including the requirement that the ultimate consumers of Wheatena  
10 be provided with a clear and reasonable warning that the ingestion of Wheatena  
11 results in exposure to acrylamide, a known carcinogen; and,

12 (b) Undertake an immediate and comprehensive public information program to  
13 alert all consumers (past, present, or future) of the inherent risk of acrylamide from  
14 exposure to Wheatena.

15 Plaintiff is also entitled to civil penalties.

16  
17 **PARTIES**

18 4. Plaintiff is an individual consumer residing within the County of San Diego,  
19 California.

20 5. Defendant Homestat Farm, Ltd. (“Homestat”) is an Ohio limited liability company.  
21 At all times relevant herein, Homestat sold Wheatena within the State of California, the County of  
22 San Diego and this judicial district. Homestat is, and at all times herein mentioned was, engaged  
23 in the business of manufacturing products for sale to and use by members of the general public  
24 and, as a part of its business, Homestat manufactured the breakfast cereal Wheatena.

25 6. Homestat conducts business within the State of California, the County of San  
26 Diego and this judicial district. Homestat may be served with citation by serving its registered  
27 agent for service, Acme Agent, Inc., 41 South High Street, Suite 2800, Columbus, Ohio 43215.  
28 Homestat is subject to the jurisdiction of this Court in that it has, either personally or through their

1 agent, servant or employee, performed one or more of the following acts: (a) placed products and  
2 material in the stream of commerce which were sold and/or used in this State; (b) operated,  
3 conducted, engaged in or carried on a business or business venture in this State; (c) has an office  
4 or agency in this State; (d) committed a tortious act within this State; (e) owned, used or  
5 possessed real property within this State; (f) caused injury to persons or property within this State  
6 while it was engaged in solicitation or service activities within this State; (g) processed, serviced  
7 or manufactured products used or consumed within this State.

8 7. Plaintiff does not know the true names and capacities of the Defendants sued as  
9 Does 1 through 10 and, therefore, sues these Defendants by these fictitious names. Plaintiff will  
10 seek to amend this Complaint to include these Doe Defendants' true names and capacities when  
11 they are ascertained. Plaintiff is informed and believes that each of the fictitiously named  
12 Defendants is responsible in some manner for the conduct alleged and for the injuries Plaintiff  
13 suffered.

#### 14 JURISDICTION

15 8. This Court has jurisdiction over this action pursuant to the California Constitution,  
16 Article XI, Section 10 and under California Code of Civil Procedure ("C.C.P.") §410.10 because  
17 Defendant transacted business and committed the acts complained of in this Complaint in  
18 California.

19 9. Venue is proper in this County in that Plaintiff is a resident of San Diego County.  
20 Moreover, Defendants are doing and at all relevant times have done business in San Diego  
21 County, and venue is proper under C.C.P. § 395.

22 10. With respect to violations of Health and Safety Code §25249.6, *et seq.*, on  
23 December 6, 2005, pursuant to Health and Safety Code §25249.7, Plaintiff served appropriate  
24 notices of the violations of Proposition 65 on Homestat, as alleged herein. The "Notices of  
25 Violation of Proposition 65" were mailed to each of these Defendants, as well as to the California  
26 Attorney General, the District Attorney of every county in California, and the City Attorneys of  
27 any cities with populations according to the most recent decennial census of over 750,000 in  
28

1 whose jurisdiction some of the violations of Proposition 65 occurred. Each notice included a  
2 certificate of merit executed by Plaintiff's attorneys stating that the person executing the  
3 certificate had consulted with one or more persons with relevant and appropriate experience or  
4 expertise who has reviewed the facts, studies, or other data regarding exposure to acrylamide, and  
5 that, based on that information, the person executing the certificate believes there is a reasonable  
6 and meritorious case for this private action. The factual information sufficient to establish the  
7 basis of the certificate of merit has been attached to the certificate of merit served on the  
8 California Attorney General.

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

12  
13 **I.**

14 **STATUTORY BACKGROUND**

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

17 13. The warning requirement of Proposition 65 is contained in Health and Safety Code  
18 section 25249.6, which provides:

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

24 14. Proposition 65 also establishes a procedure by which the state is to develop a list of  
25 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code §  
26 25249.8). No warning need be given concerning a listed chemical until one year after the  
27 chemical first appears on the list. (*Id.* § 25249.10(b)).

28 15. Proposition 65 provides that any person "violating or threatening to violate" the  
statute may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §

1 25249.7). To “threaten to violate” is defined to mean “to create a condition in which there is a  
2 substantial probability that a violation will occur.” (*Id.* § 25249.11(e)). In addition, violators are  
3 liable for civil penalties of up to \$2,500.00 per day for each violation, recoverable in a civil  
4 action. (*Id.* § 25249.7(b)).

5 16. Implementing regulations promulgated by the Health and Welfare Agency provide  
6 that the warning method “must be reasonably calculated, considering the alternative methods  
7 available under the circumstances, to make the warning message available to the individual prior  
8 to exposure.” (Cal. Code Regs., tit. 22 § 12601(a)).

9 17. The regulations prescribe certain types of warnings that are considered valid,  
10 including: (A) warnings on labels, (B) identification at the retail outlet through “shelf labeling,  
11 signs, menus, or a combination thereof,” and (C) “a system of signs, public advertising identifying  
12 the system and toll-free information services, that provides clear and reasonable warnings.” (Cal.  
13 Code Regs., tit. 22 §§ 12601(b)(1)(A)-(C)).

## 14 15 **II.**

### 16 **FACTS**

17 18. Acrylamide was listed under Proposition 65 as a chemical known to the State of  
18 California to cause cancer on January 1, 1990.

19 19. Wheatena contains acrylamide and the acrylamide in Wheatena is ingested by  
20 persons who consume it in its intended manner.

21 20. On or about March, 2005, the Reproductive and Cancer Hazard Assessment  
22 Section of the Office of Environmental Health Hazard Assessment (which is part of the California  
23 Environmental Protection Agency) reported that Wheatena contains levels of acrylamide that  
24 exceed the current acrylamide exposure levels which trigger Proposition 65’s warning  
25 requirements by an incredible 15,000 %. In fact, Wheatena had the highest concentration of  
26 acrylamide among dozens of food products tested.

27 21. Plaintiff is informed and believes, and based on that information and belief alleges,  
28 that each Defendant has known since at least March, 2005 that the Wheatena it sells, distributes,

1 or manufactures, contains acrylamide and causes consumers of Wheatena to be exposed to  
2 acrylamide at concentrations in excess of the acrylamide exposure levels which trigger  
3 Proposition 65's warning requirements.

4 22. Nevertheless, and in violation of California Health and Safety Code § 25249.6, *et*  
5 *seq.*, the Defendants have not labeled, marked or used signs, shelf warnings, or any indicia  
6 whatsoever that warns or informs the public that Wheatena contains and exposes consumers to  
7 acrylamide, a chemical known to the State of California to be a carcinogen. Defendants have in  
8 the course of doing business, knowingly and intentionally, exposed individuals to a chemical  
9 known to the State of California to be a carcinogen without first providing a clear and reasonable  
10 warning as required by California Health and Safety Code §§ 25249.6 and 25249.11(f).  
11 Defendants have also promoted and marketed Wheatena for sale without any warning regarding  
12 the levels of acrylamide exposure. As a direct result of Defendants' acts and omissions, the  
13 general public in California is being regularly, unlawfully, and involuntarily exposed to  
14 acrylamide, a known carcinogen.

15  
16 **III.**

17 **FIRST CAUSE OF ACTION**

18 **(For Violation Of Health & Safety Code §25249.6, *et seq.*)**

19 23. Plaintiff incorporates by reference paragraphs 1 through 22 as if fully set forth  
20 herein.

21 24. Defendants have engaged and continue to engage in conduct which violates Health  
22 & Safety Code § 25249.6 *et seq.* This conduct includes the manufacturing, packaging, marketing,  
23 and distributing of Wheatena, the foreseeable use of which results in exposing the public to  
24 acrylamide, known to the State of California to be a carcinogen, without first providing a clear  
25 and reasonable warning pursuant to Health and Safety Code §§ 25249.6 and 25249.11(f).  
26 Defendants have, therefore, in the course of doing business, knowingly and intentionally exposed  
27 individuals to a chemical known to the State of California to cause cancer without first providing  
28 a clear and reasonable warning. This exposure is intentional because it is the result of deliberate

1 acts of Defendants in arranging the sale of their products to consumers.

2 25. By the above described acts, Defendants are liable, pursuant to Health & Safety  
3 Code § 25249.7(b), for a civil penalty of up to \$2,500.00 per day per individual exposure to  
4 acrylamide through Wheatena.

5 26. By committing the acts alleged herein, the Defendants have caused irreparable  
6 harm for which there is no plain, speedy, or adequate remedy at law. In the absence of equitable  
7 relief, the general public will continue to be involuntarily exposed to acrylamide which is  
8 contained in Wheatena, creating substantial risk of irreparable harm.

9  
10 **IV.**

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully prays for relief from Defendants as follows:

13 1. A permanent injunction enjoining the Defendants, their agents, employees, assigns,  
14 and all persons acting in concert or participating with them from: (1) selling and distributing  
15 Wheatena which contains acrylamide in California, without first providing to the ultimate  
16 consumers and users a clear and reasonable warning that the foreseeable consumption of  
17 Wheatena results in exposure to acrylamide, a chemical known to the State of California to be a  
18 carcinogen; (2) failing to undertake a court-approved public information campaign to warn and  
19 inform the general public that consumption of Wheatena which contains acrylamide results in  
20 exposure to acrylamide, a chemical known to the State of California to be a carcinogen and  
21 identifying steps that may be taken to reduce such exposure;

22 2. An award of statutory penalties of \$2,500.00 per day for each violation of  
23 Proposition 65 throughout the State of California;

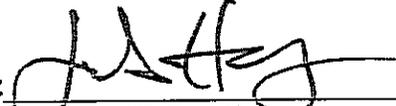
24 3. Reasonable attorneys' fees and costs; and  
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4. Such other costs and further relief as the Court may deem proper.

Dated: April 7, 2006

ROSS, DIXON & BELL, LLP

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