

COPY

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

BIRDS EYE FOODS, INC.; GREAT AMERICAN FOODS, INC.; THE HAIN CELESTIAL GROUP, INC.; PIK NIK FOODS, USA; POORE BROTHERS, INC.; SNYDER'S OF HANOVER; SNYDER'S OF HANOVER MFG., INC.; SNYDER'S OF HANOVER SALES COMPANY; VESTAR/AGRILINK ASSOCIATES HOLDINGS, LLC; ZAPPE ENDEAVORS, LLC; and DOES 1-100, inclusive

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

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

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY

OF ORIGINAL FILED
Los Angeles Superior Court

AUG 08 2006

John A. Clarke, Executive Officer/Clerk

By D. Giles Deputy
D. Giles

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), 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), the California Courts Online Self-Help Center (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/), 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), en el Centro de Ayuda de las Cortes de California, (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):
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
111 N. Hill Street
Los Angeles, CA 90012
Central Judicial District

CASE NUMBER:
(Número del Caso):

BC356591

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):
CHRISTOPHER P. RIDOUT (SBN 143931) (213) 623-7755
Rose, Klein & Marias LLP
801 S. Grand Avenue, 11th Floor
Los Angeles, CA 90017-4645

DATE: **AUG 08 2006** John A. Clarke Clerk, by DERRIAN GILES Deputy
(Fecha) (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)).

(SEAL)

AUG 08 2006

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):

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE**

Case Number _____

BC356591

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Gregory Alarcon	36	410	Hon. William F. Highberger	32	406
Hon. Alice E. Altoon	28	318	Hon. Ernest M. Hiroshige	54	512
Hon. Conrad Aragon	49	509	Hon. Jane L. Johnson	56	514
Hon. Helen I. Bendix	18	308	Hon. Morris B. Jones	48	506
Hon. Elihu M. Berle	42	416	Hon. Malcolm H. Mackey	55	515
Hon. Tricia Ann Bigelow	23	315	Hon. Jon M. Mayeda	72	731
Hon. Soussan G. Bruguera	71	729	Hon. Rita Miller	16	306
Hon. Susan Bryant-Deason	52	510	Hon. David L. Minning	61	632
Hon. James C. Chalfant	13	630	Hon. Aurelio Munoz	47	507
Hon. Victoria Chaney*	324	CCW	Hon. Mary Ann Murphy	25	317
X Hon. Judith C. Chirlin	89	532	Hon. Joanne O'Donnell	37	413
Hon. Ralph W. Dau	57	517	Hon. Victor H. Person	39	415
Hon. Maureen Duffy-Lewis	38	412	Hon. Mel Red Recana	45	529
Hon. James R. Dunn	26	316	Hon. Andria K. Richey	31	407
Hon. Lee Edmon	68	617	Hon. Teresa Sanchez-Gordon	74	735
Hon. William F. Fahey	78	730	Hon. James E. Satt	40	414
Hon. Irving S. Feffer	51	511	Hon. John P. Shook	53	513
Hon. Edward A. Ferns	69	621	Hon. Ronald M. Sohigian	41	417
Hon. Kenneth R. Freeman	64	601	Hon. Michael L. Stern	62	600
Hon. Haley J. Fromholz	20	310	Hon. Mary Thornton House	17	309
Hon. Richard Fruin	15	307	Hon. Rolf M. Treu	58	516
Hon. Terry A. Green	14	300	Hon. John Shepard Wiley Jr.	50	508
Hon. Elizabeth A. Grimes	30	400	Hon. David A. Workman	19	311
Hon. Paul Gutman	34	408	Hon. George Wu	33	409
Hon. Robert L. Hess	24	314		35	411
	3	224	Other		

*Class Actions

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____

JOHN A. CLARKE, Executive Officer/Clerk

By _____, Deputy Clerk

COPY

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OF ORIGINAL FILED
Los Angeles Superior Court

AUG 08 2006

John A. Clarke, Executive Officer/Clerk
By D. Giles Deputy

1 ROSE, KLEIN & MARIAS LLP
2 Christopher P. Ridout, State Bar No. 143931
3 801 S. Grand Avenue
4 Eleventh Floor
5 Los Angeles, CA 90017-4645
6 (213) 626-0571
7 (213) 623-7755 Fax

8 ENVIRONMENTAL LAW FOUNDATION
9 James R. Wheaton, State Bar No. 115230
10 Lynne R. Saxton, State Bar No. 226210
11 1736 Franklin Street, 9th Floor
12 Oakland, CA 94612
13 (510) 208-4555
14 (510) 208-4562 Fax

15 LAW OFFICE OF GIDEON KRACOV
16 GIDEON KRACOV (State Bar No. 179815)
17 801 S. Grand Avenue
18 Eleventh Floor
19 Los Angeles, CA 90017-4645
20 (213) 626-0571
21 (213) 623-7755 Fax

22 Attorneys for Plaintiff
23 ENVIRONMENTAL LAW FOUNDATION

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF LOS ANGELES

21 BC356591

22 ENVIRONMENTAL LAW FOUNDATION,) Case No.:
23 Individually and on Behalf of the General)
24 Public,) **COMPLAINT FOR CIVIL PENALTIES**
25) **AND INJUNCTIVE RELIEF**
26)
27 vs.) Violation of Cal. Health & Safety Code §
28) 25249.6 *et seq.*
29 BIRDS EYE FOODS, INC.; GREAT)
30 AMERICAN FOODS, INC.; THE HAIN)
31 CELESTIAL GROUP, INC.; PIK NIK)
32 FOODS, USA; POORE BROTHERS, INC.;)

1 SNYDER'S OF HANOVER; SNYDER'S OF)
2 HANOVER MFG., INC.; SNYDER'S OF)
3 HANOVER SALES COMPANY;)
4 VESTAR/AGRILINK ASSOCIATES)
5 HOLDINGS, LLC; ZAPPE ENDEAVORS,)
6 LLC; and DOES 1-100, inclusive,)
7)
8 Defendants.)
9)
10)
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1 Plaintiff Environmental Law Foundation (“Plaintiff” or “ELF”) brings this action on its
2 own behalf and on behalf of the general public based on information and belief and
3 investigation of counsel, except for information based on personal knowledge, and hereby
4 makes the following allegations:

5 **Introduction**

6 1. This action seeks civil penalties and injunctive relief to remedy defendants’
7 continuing failure to provide a clear and reasonable warning to California consumers that they
8 are being exposed to acrylamide, a chemical known to the State of California to cause cancer.
9 Such exposures occur and continue to occur through the defendants’ manufacture, distribution
10 and/or sale of potato chips and/or potato crisps (“Potato Chips”) that contain acrylamide. Potato
11 Chips are a popular food that is consumed by a significant number of consumers, many of
12 whom are children, and consumers are exposed to acrylamide when they consume defendants’
13 Potato Chips. Defendants’ continuing failure to warn California consumers that consumption of
14 the Potato Chips exposes them to acrylamide, a known carcinogen, is a violation of California’s
15 Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code § 25249.6,
16 *et seq.* (“Proposition 65”).

17 2. Proposition 65 makes it unlawful for any person in the course of doing business
18 to knowingly and intentionally expose any individual to a chemical known to the State of
19 California to cause cancer without first providing a clear and reasonable warning.

20 3. Although defendants continue to expose California consumers to acrylamide
21 through their manufacture, distribution and/or sale of Potato Chips that contain acrylamide,
22 defendants fail to provide a clear and reasonable warning in violation of Proposition 65.
23 Therefore, Plaintiff is entitled to civil penalties. Plaintiff is also entitled to injunctive relief to
24 compel defendants to: (1) provide the ultimate consumers of their Potato Chips with a clear and
25 reasonable warning that consumption of their Potato Chips results in exposure to acrylamide, a
26 known carcinogen; and (2) undertake an immediate and comprehensive public information
27 program to alert all California consumers of defendants’ Potato Chips (including past, present
28 and future consumers) about the inherent risk of exposure to acrylamide from consuming these

1 products.

2 **Parties**

3 4. Plaintiff Environmental Law Foundation is a California nonprofit organization
4 founded on Earth Day in 1991. ELF is dedicated to the preservation and enhancement of
5 human health and the environment. ELF has a longstanding interest in reducing health hazards
6 resulting from the public's exposure to toxic chemicals, such as acrylamide. ELF is a person
7 within the meaning of Health and Safety Code § 25249.11(a) and brings this action on its own
8 behalf and on behalf of the general public, pursuant to Health and Safety Code § 25249.7(d).

9 5. Defendant Birds Eye Foods, Inc. ("Birds Eye") is a person in the course of doing
10 business within the meaning of Health and Safety Code § 25249.11. Birds Eye manufactures,
11 distributes and/or sells Potato Chips that contain acrylamide, including but not limited to Tim's
12 Cascade Hawaiian Kettle Style Potato Chips Luau BBQ and Tim's Cascade Hawaiian Kettle
13 Style Potato Chips Sweet Maui Onion.

14 6. Defendant Great American Foods, Inc. ("Great American Foods") is a person in
15 the course of doing business within the meaning of Health and Safety Code § 25249.11. Great
16 American Foods manufactures, distributes and/or sells Potato Chips that contain acrylamide,
17 including but not limited to Pik Nik Original Shoestring Potatoes.

18 7. Defendant The Hain Celestial Group, Inc. ("Hain Celestial") is a person in the
19 course of doing business within the meaning of Health and Safety Code § 25249.11. Hain
20 Celestial manufactures, distributes and/or sells Potato Chips that contain acrylamide, including
21 but not limited to Terra Kettles Krinkle Cut Blend Sea Salt and Terra Sweet Potato Chips.

22 8. Defendant Pik Nik Foods, USA ("Pik Nik") is a person in the course of doing
23 business within the meaning of Health and Safety Code § 25249.11. Pik Nik manufactures,
24 distributes and/or sells Potato Chips that contain acrylamide, including but not limited to Pik
25 Nik Original Shoestring Potatoes.

26 9. Defendant Poore Brothers, Inc. ("Poore Brothers") is a person in the course of
27 doing business within the meaning of Health and Safety Code § 25249.11. Poore Brothers
28 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including but not

1 limited to Boulder Canyon Malt Vinegar & Sea Salt Potato Chips.

2 10. Defendant Snyder's of Hanover is a person in the course of doing business within
3 the meaning of Health and Safety Code § 25249.11. Snyder's of Hanover manufactures,
4 distributes and/or sells Potato Chips that contain acrylamide, including but not limited to Eat
5 Smart Veggie Crisps.

6 11. Defendant Snyder's of Hanover Mfg., Inc. ("Snyder's of Hanover Mfg.") is a
7 person in the course of doing business within the meaning of Health and Safety Code §
8 25249.11. Snyder's of Hanover Mfg. manufactures, distributes and/or sells Potato Chips that
9 contain acrylamide, including but not limited to Eat Smart Veggie Crisps.

10 12. Defendant Snyder's of Hanover Sales Company ("Snyder's of Hanover Sales") is
11 a person in the course of doing business within the meaning of Health and Safety Code §
12 25249.11. Snyder's of Hanover Sales manufactures, distributes and/or sells Potato Chips that
13 contain acrylamide, including but not limited to Eat Smart Veggie Crisps.

14 13. Defendant Vestar/Agrilink Associates Holdings, LLC ("Vestar/Agrilink") is a
15 person in the course of doing business within the meaning of Health and Safety Code §
16 25249.11. Vestar/Agrilink manufactures, distributes and/or sells Potato Chips that contain
17 acrylamide, including but not limited to Tim's Cascade Hawaiian Kettle Style Potato Chips
18 Luau BBQ and Tim's Cascade Hawaiian Kettle Style Potato Chips Sweet Maui Onion.

19 14. Defendant Zappe Endeavors, LLC ("Zappe") is a person in the course of doing
20 business within the meaning of Health and Safety Code § 25249.11. Zappe manufactures,
21 distributes and/or sells Potato Chips that contain acrylamide, including but not limited to Dirty
22 Potato Chips Mesquite BBQ.

23 15. Defendants DOES 1 through 100 are persons in the course of doing business
24 within the meaning of Health and Safety Code § 25249.11. Plaintiff is presently unaware of
25 their true names and capacities and, therefore, Plaintiff sues Defendant DOES 1 though 100 by
26 such fictitious names, pursuant to California Code of Civil Procedure § 474. Plaintiff will
27 amend this Complaint and include these Doe Defendants' true names and capacities when they
28 are ascertained.

1 16. Birds Eye, Great American Foods, Hain Celestial, Pik Nik, Poore Brothers,
2 Snyder's of Hanover, Snyder's of Hanover Mfg., Snyder's of Hanover Sales, Vestar/Agrilink,
3 Zappe and DOES 1-100 are collectively referred to as "Defendants."

4 17. Each Defendant has employed ten (10) or more persons at all times relevant to
5 this action.

6 18. At all times relevant to this action, each Defendant was an agent or employee of
7 each other Defendant. In conducting the activities alleged in this Complaint, each Defendant
8 was acting within the course and scope of this agency or employment, and was acting with the
9 consent, permission, and authorization of each of the remaining Defendants. All actions of
10 each Defendant alleged in this Complaint were ratified and approved by every other Defendant
11 or their officers or managing agents, and by agreeing to actively conceal the true facts as
12 alleged herein. Alternatively, Defendants aided, conspired with and/or facilitated wrongful
13 conduct of other Defendants.

14 **JURISDICTION AND VENUE**

15 19. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article XI, Section 10, because this case is a cause not given by statute to other
17 trial courts. This Court has jurisdiction over this action pursuant to Health & Safety Code §
18 25249.7, which allows enforcement of violations of Proposition 65 in any Court of competent
19 jurisdiction.

20 20. This Court has jurisdiction over Defendants named herein because Defendants
21 either are located in this State or are foreign corporations authorized to do business in
22 California, are registered with the California Secretary of State, or who do sufficient business in
23 California, have sufficient minimum contacts with California, or otherwise intentionally avail
24 themselves of the markets within California through the manufacture, distribution, promotion,
25 marketing, or sale of their products in California to render the exercise of jurisdiction by the
26 California courts permissible under traditional notions of fair play and substantial justice.

27 21. Venue is proper in the County of Los Angeles because one or more of the
28 violations arise in Los Angeles County.

1 22. ELF is a non-profit organization acting as a private attorney general, as
2 authorized by Health & Safety Code § 25249.7. In this capacity, ELF does not have Article III
3 standing as ELF has not suffered any distinct and/or palpable injury. The statutory right to act
4 as a private attorney general does not confer injury on ELF to satisfy Article III standing.
5 *Mortera v. North America Mortgage Co.* (2001) 172 F.Supp.2d 1240, 1244.

6 **STATUTORY AND REGULATORY BACKGROUND**

7 23. Proposition 65 was passed by voter initiative in 1986, in which the People of
8 California declared their right to be “informed about exposures to chemicals that cause cancer,
9 birth defects, or other reproductive harm.” Proposition 65, § 1(b).

10 24. Under Proposition 65:

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

14 Health and Safety Code § 25249.6

15 25. Proposition 65 establishes a procedure by which the Governor lists chemicals
16 known to the state to cause cancer. Health and Safety Code § 25249.8. Pursuant to this
17 authority, Governor Deukmejian placed acrylamide on the list of known carcinogens on January
18 1, 1990. On January 1, 1991, acrylamide became subject to the warning requirements under
19 Proposition 65. Health and Safety Code § 25249.10(b).

20 26. A person that exposes individuals in California to a known carcinogen must
21 provide a clear and reasonable warning. Health and Safety Code § 25249.6. If the violator
22 establishes that exposure to the chemical in question occurs at a level that poses “no significant
23 risk”, no warning may be required. Health and Safety Code § 25249.10(c). The no significant
24 risk level for acrylamide is 0.2 micrograms/day. 22 California Code of Regulations (“CCR”)
25 12705.

26 **FACTS**

27 27. Potato Chips are a food item consumed regularly by a significant portion of the
28 population, particularly children. They are a common side item served with a wide variety of

1 meals or eaten alone as a snack.

2 28. On April 24, 2002, researchers at the Swedish National Food Administration and
3 Stockholm University reported that acrylamide was contained in a variety of fried and oven-
4 baked foods, including Potato Chips.

5 29. In 2002, the United States Food and Drug Administration (“FDA”) began
6 investigating the presence of elevated levels of acrylamide in oven baked and fried foods,
7 including Potato Chips. During that period, FDA conducted public and scientific meetings on
8 this issue. In May of 2006, FDA released its Exposure Assessment on Acrylamide, in which it
9 concluded that Potato Chips are the second greatest source of acrylamide in an average diet.

10 30. Research has shown that acrylamide levels in Potato Chips can be reduced in a
11 number of ways including, but not limited to: (1) choosing different varieties of potato; (2)
12 avoiding sugar dips/coatings in partially cooked products; (3) increasing product moisture; (4)
13 lowering pH; (5) storing products at higher temperatures; (6) changing temperature/cooking
14 regimes; (7) cooking products at lower temperatures; (8) adding asparaginase; (9) replacing
15 ammonium; and (10) changing cooking oils.

16 31. Defendants manufacture, distribute and/or sell Potato Chips for distribution and
17 retail in California. Defendants’ Potato Chips are intended for human consumption.
18 Defendants’ Potato Chips contain acrylamide at levels above those established by the State of
19 California as posing no significant risk.

20 32. Despite the fact that Defendants introduce Potato Chips which contain
21 acrylamide into California’s marketplace, Defendants fail to provide California consumers with
22 a clear and reasonable warning that consuming Defendants’ Potato Chips results in exposure to
23 acrylamide, a chemical known to the State of California to cause cancer.

24 33. Any person acting in the public interest may bring an action for violations of
25 Proposition 65’s clear and reasonable warning requirement provided that: (1) such person has
26 provided a 60-day Notice of Violation of Proposition 65 (“Notice of Violation”) to the
27 California Attorney General, the District Attorney of every county in California, the City
28 Attorney of each California city with a population over 750,000 and the violator; and (2) no

1 public prosecutor is diligently prosecuting an action against the violation. Health and Safety
2 Code §25249.7(d).

3 34. On May 24, 2006, Plaintiff provided a Notice of Violation to the California
4 Attorney General, the District Attorney of every county in California, the City Attorney of each
5 California city with a population over 750,000 and each named Defendant, pursuant to Health &
6 Safety Code § 25249.7(d).

7 35. Each Notice of Violation included a Certificate of Merit that certified that
8 Plaintiff's attorneys consulted with one or more persons with relevant and appropriate
9 experience or expertise who has reviewed facts, studies or other data regarding exposure to
10 acrylamide and that, based on that information, such attorneys believe that there is a reasonable
11 and meritorious case for this private action. Each Notice of Violation also included a Certificate
12 of Service By Mail and a document entitled "The State Drinking Water & Toxic Enforcement
13 Act of 1986 (Proposition 65) A Summary." Health and Safety Code § 25249.7(d). In
14 compliance with Health and Safety Code § 25249.7(d) and 11 CCR § 3102, the Attorney
15 General was served with a Certificate of Merit that included confidential factual information
16 sufficient to establish the basis of the Certificate of Merit, including the identity of the
17 individual(s) with whom Plaintiff consulted and the facts, studies, or other data that was
18 reviewed by such person(s).

19 36. None of the public prosecutors that received the Notice of Violation has
20 commenced and is diligently prosecuting an action against the violations alleged in this
21 Complaint, although the notice period provided in § 25249.7 has elapsed since the Notice of
22 Violation was provided.

23 37. Defendants knew that acrylamide has been identified by the State of California
24 as a known carcinogen subject to the warning requirements under Proposition 65.

25 38. Defendants were informed of the presence of acrylamide in their Potato Chips
26 from the Notice of Violation provided by Plaintiff and from the various studies and information
27 that have been published and are in the public domain, such as the information identified in
28 Paragraphs 28 and 29, *supra*.

1 39. Defendants know and intend that California consumers, including children, will
2 consume their Potato Chips, thereby exposing them to acrylamide.

3 40. Nevertheless, Defendants have failed and continue to fail to provide California
4 consumers with a clear and reasonable warning that consumption of their Potato Chips causes
5 exposure to acrylamide, a known carcinogen, in violation of California Health and Safety Code
6 § 25249.6.

7 **FIRST CAUSE OF ACTION**

8 (California Health and Safety Code §§ 25249.6 *et seq.*)

9 41. Plaintiff incorporates by reference paragraphs 1 through 40 as if fully set forth
10 herein.

11 42. The People of the State of California have declared in Proposition 65 their right
12 “[t]o be informed about exposure to chemicals that cause cancer, birth defects or other
13 reproductive harm.” Proposition 65, § 1(b).

14 43. To carry out those statutory purposes, Proposition 65 requires that a clear and
15 reasonable warning be given by persons who, in the course of doing business, knowingly and
16 intentionally expose any individual to a chemical known to the State of California to be a
17 carcinogen.

18 44. On January 1, 1990, Governor Deukmejian listed acrylamide as a chemical
19 known to the State of California to cause cancer. Acrylamide became subject to the warning
20 requirements of Proposition 65 on January 1, 1991. Health & Safety Code § 25249.10(b).

21 45. Proposition 65 provides that any person “violating or threatening to violate” the
22 statute may be enjoined in any court of competent jurisdiction. Health and Safety Code §
23 25249.7. “Threaten to violate” is defined to mean “to create a condition in which there is a
24 substantial probability that a violation will occur.” Health and Safety Code § 25249.11(e).
25 Violators are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable
26 in a civil action. Health and Safety Code § 25249.7(b).

27 46. Defendants have engaged and continue to engage in conduct which violates
28 Health and Safety Code § 25249.6. This conduct includes the manufacture, distribution and/or

1 sale of Potato Chips that contain acrylamide into California markets without a clear and
2 reasonable warning to California consumers that consumption of these Potato Chips results in
3 exposure to acrylamide, a chemical known to the State of California to cause cancer.
4 Defendants have, therefore, in the course of doing business, knowingly and intentionally
5 exposed individuals to a chemical known to the State of California to cause cancer without first
6 providing a clear and reasonable warning.

7 47. By engaging in the above described acts, Defendants are liable for civil penalties
8 of up to \$2,500 per day per individual exposure to acrylamide from their Potato Chips, pursuant
9 to Health and Safety Code § 25249.7(b).

10 48. In the absence of equitable relief, the general public will continue to be
11 involuntarily exposed to acrylamide that is contained in Defendants' Potato Chips, creating
12 substantial risk of irreparable harm. Thus, by committing the acts alleged herein, Defendants
13 have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for the following relief:

16 A. Pursuant to Health and Safety Code §25249.7(a), that the Court order a temporary
17 restraining order or a preliminary and permanent injunction to enjoin Defendants from:

18 (1) Manufacturing, distributing and/or selling their Potato Chips which
19 contain acrylamide in California without providing to the ultimate consumers a clear and
20 reasonable warning that consumption of their Potato Chips results in exposure to acrylamide, a
21 chemical known to the State of California to cause cancer; and

22 (2) Failing to undertake a court-approved public information campaign to
23 warn and inform individuals in California that consuming Defendants' Potato Chips that contain
24 acrylamide will result in exposure to acrylamide, a chemical known to the State of California to
25 cause cancer, and failing to identify steps that may be taken to reduce such exposure;

26 B. An award of civil penalties of \$2500 per day for each violation of Proposition 65;

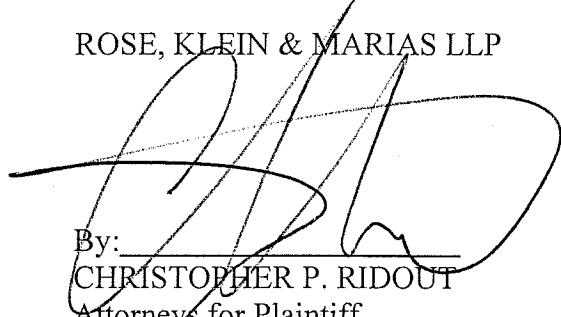
27 C. Reasonable attorneys' fees and costs; and
28

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

2
3
4 DATED: August 8, 2006

Respectfully submitted,

ROSE, KLEIN & MARIAS LLP



By: CHRISTOPHER P. RIDOUT

Attorneys for Plaintiff

ENVIRONMENTAL LAW FOUNDATION

COPY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Bar number, and address): CHRISTOPHER P. RIDOUT (SBN 143931) Rose, Klein & Marias LLP 801 S. Grand Avenue, 11th Floor Los Angeles, CA 90017-4645 TELEPHONE NO.: (213) 626-0571 FAX NO.: (213) 623-7755 ATTORNEY FOR (Name): Plaintiff Environmental Law Foundation		FOR COURT USE ONLY CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court AUG 08 2006 John A. Clarke, executive Officer/Clerk By: <u>D. Giles</u> Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central Judicial District		CASE NAME: Environmental Law Foundation, et al., v. Birds Eye Foods, Inc., et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	
		CASE NUMBER: 0356591 JUDGE: DEPT:	

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

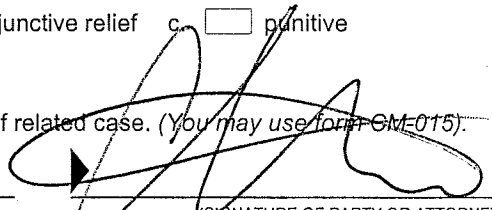
a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015).

Date: August 8, 2006
 CHRISTOPHER P. RIDOUT (SBN 143931)
 (TYPE OR PRINT NAME)  (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

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CASE NUMBER

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 20 HOURS/ DAYS.

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.	
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.	
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.	
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.	
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.	
Intellectual Property (19)	<input type="checkbox"/> A6016 Intellectual Property	2., 3.	

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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1., 2., 3.
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	<input type="checkbox"/> A6008 Contract/Warranty Breach-Seller Plaintiff (no fraud/negligence)	2., 5.
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1., 2., 3., 5.
	<input type="checkbox"/> A6031 Tortious Interference	1., 2., 3., 5.
	<input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2., 6.
	<input type="checkbox"/> A6032 Quiet Title	2., 6.
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

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CASE NUMBER

Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

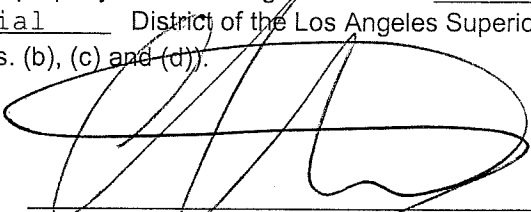
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input checked="" type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE			ADDRESS:
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			Exposure occurred throughout the State of California, including, but not limited to, within
CITY: Los Angeles	STATE: CA	ZIP CODE: 90017-4645	the City of Los Angeles at 801 S. Grand Avenue.

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Los Angeles Superior courthouse in the Central Judicial District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subs. (b), (c) and (d)).



(SIGNATURE OF ATTORNEY/FILING PARTY)
Christopher P. Ridout

Dated: August 8, 2006

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LASC Approved CIV 109 03-04 (Rev. 03/06).
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form 982(a)(27), if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.