

**SU MONS**  
**(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

ALBERTSONS, LLC; FOODS CO.; FOOD 4 LESS OF CALIFORNIA, INC.; FOOD 4 LESS OF SOUTHERN CALIFORNIA, INC.; THE KROGER COMPANY; FRED MEYER STORES, INC.; NEW ALBERTSON'S, INC.; RALEYS, INC.; RALPHS GROCERY COMPANY; SAFEWAY, INC.; SMART & FINAL, INC.; STATER BROS. MARKET; TRADER JOE'S COMPANY; THE VONS COMPANIES, INC.; WHOLE FOODS MARKET, INC.; and DOES 1-100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LC 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

JAN 31 2008

John A. Clarke, Executive Officer/Clerk

By D.M. Swain, Deputy  
D.M. SWAIN

COPY

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):*  
LOS ANGELES SUPERIOR COURT  
CENTRAL DISTRICT  
111 North Hill Street  
Los Angeles, CA 90012-3014

CASE NUMBER:  
*(Número del Caso):*

BC384665

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):*  
David A. Rosen (213) 626-0571 (213) 623-7755  
ROSE, KLEIN & MARIAS LLP  
801 S. Grand Avenue, 11th Floor  
Los Angeles, CA 90017-4645

DATE: JAN 31 2008 Clerk, by D.M. Swain, 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]

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

- as an individual defendant.
- as the person sued under the fictitious name of *(specify)*:
- 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)*:
- by personal delivery on *(date)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

David A. Rosen  
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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

STREET ADDRESS: 111 North Hill Street

MAILING ADDRESS:

CITY AND ZIP CODE: Los Angeles, CA 90012-3014

BRANCH NAME: CENTRAL DISTRICT

CASE NAME: ENVIRONMENTAL LAW FOUNDATION, et al. v. ALBERTSONS, LLC, et al.

FOR COURT USE ONLY

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

JAN 31 2008

John A. Clarke, Executive Officer/Clerk

By: *[Signature]*  
D.M. SWAIN, Deputy

JUDGE:

DEPT:

BC384665

COPY

CIVIL CASE COVER SHEET

Complex Case Designation

Unlimited (Amount demanded exceeds \$25,000)  Limited (Amount demanded is \$25,000 or less)

Counter  Joinder  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 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

- Auto (22)
- Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Product liability (24)
- Medical malpractice (45)
- Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)
- Civil rights (08)
- Defamation (13)
- Fraud (16)
- Intellectual property (19)
- Professional negligence (25)
- Other non-PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
- Other employment (15)

Contract

- Breach of contract/warranty (06)
- Rule 3.740 collections (09)
- Other collections (09)
- Insurance coverage (18)
- Other contract (37)

Real Property

- Eminent domain/Inverse condemnation (14)
- Wrongful eviction (33)
- Other real property (26)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38)

Judicial Review

- Asset forfeiture (05)
- Petition re: arbitration award (11)
- Writ of mandate (02)
- Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
- Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

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

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

4. Number of causes of action (specify):

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: 1/29/08

David A. Rosen

(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 3.220.) 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 3.400 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 collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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

Case Number \_\_\_\_\_

BC384665

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below. There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Gregory Alarcon	36	410	Hon. William F. Highberger	32	406
Hon. Conrad Aragon	49	509	Hon. Ernest M. Hiroshige	54	512
Hon. Helen I. Bendix	18	308	Hon. Jane L. Johnson	56	514
Hon. Elihu M. Berle	42	416	Hon. Ann I. Jones	40	414
Hon. Tricia Ann Bigelow	23	315	Hon. Ruth Ann Kwan	72	731
Hon. Kevin C. Brazile	20	310	Hon. Charles C. Lee	33	409
Hon. Soussan G. Bruguera	71	729	Hon. Malcolm H. Mackey	55	515
Hon. Susan Bryant-Deason	52	510	Hon. Rita Miller	16	306
Hon. James C. Chalfant	13	630	Hon. David L. Minning	61	632
Hon. Victoria Chaney*	324	CCW	Hon. Aurelio Munoz	47	507
Hon. Judith C. Chirlin	19	311	Hon. Mary Ann Murphy	25	317
Hon. Ralph W. Dau	57	517	Hon. Joanne O'Donnell	37	413
Hon. Maureen Duffy-Lewis	38	412	Hon. Yvette M. Palazuelos	28	318
Hon. James R. Dunn	26	316	Hon. Mel Red Recana	45	529
Hon. Mark Mooney	68	617	Hon. Alan S. Rosefield	31	407
Hon. William F. Fahey	78	730	Hon. Teresa Sanchez-Gordon	74	735
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 C. Solner	39	415
Hon. Richard Fruin	15	307	Hon. Michael L. Stern	62	600
Hon. Terry A. Green	14	300	Hon. Rolf M. Treu	58	516
Hon. Elizabeth A. Grimes	30	400	Hon. Elizabeth Allen White	48	506
Hon. Paul Gutman	34	408	Hon. John Shepard Wiley Jr.	50	508
Hon. Robert L. Hess	24	314	Hon. Mary Thornton-House	17	309
			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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18 Attorneys for Plaintiff  
19 ENVIRONMENTAL LAW FOUNDATION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF LOS ANGELES

22 ENVIRONMENTAL LAW FOUNDATION,  
23 Individually and on Behalf of the General Public,  
24  
25 Plaintiff,  
26  
27 vs.

28 ) Case No.: BC384665  
)  
) **COMPLAINT FOR CIVIL**  
) **PENALTIES AND INJUNCTIVE**  
) **RELIEF**  
)  
) Violation of Cal. Health & Safety Code §  
) 25249.6, *et seq.*

29 ALBERTSONS, LLC; FOODS CO.; FOOD 4  
30 LESS OF CALIFORNIA, INC.; FOOD 4 LESS  
31 OF SOUTHERN CALIFORNIA, INC.; THE  
32 KROGER COMPANY; FRED MEYER STORES,  
33 INC.; NEW ALBERTSON'S, INC.; RALEY'S,  
34 INC.; RALPHS GROCERY COMPANY;  
35 SAFEWAY, INC.; SMART & FINAL, INC.;  
36 STATER BROS. MARKET; TRADER JOE'S  
37 COMPANY; THE VONS COMPANIES, INC.;  
38 WHOLE FOODS MARKET, INC.; and DOES 1-  
100, inclusive,  
Defendants.

CONFIRMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

JAN 31 2008

John A. Clarke, Executive Officer/Clerk  
By D.M. Swain, Deputy  
D.M. SWAIN

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 ///

1 and future consumers) about the inherent risk of exposure to acrylamide from consuming these  
2 products.

3 **PARTIES**

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

10 5. Defendant Albertsons, LLC ("Albertsons") is a person in the course of doing  
11 business within the meaning of Health and Safety Code § 25249.11. Albertsons manufactures,  
12 distributes and/or sells Potato Chips that contain acrylamide, including Albertsons' house  
13 brand of Potato Chips, Pik Nik, Boulder Canyon and Tim's Cascade Potato Chips.

14 6. Defendant Foods Co. ("Foods Co.") is a person in the course of doing business  
15 within the meaning of Health and Safety Code § 25249.11. Foods Co. manufactures,  
16 distributes and/or sells Potato Chips that contain acrylamide, including Kroger's house brand  
17 of Potato Chips and Tim's Cascade Potato Chips.

18 7. Defendant Food 4 Less of California, Inc. ("Food 4 Less of Cal.") is a person in  
19 the course of doing business within the meaning of Health and Safety Code § 25249.11. Food  
20 4 Less of Cal. manufactures, distributes and/or sells Potato Chips that contain acrylamide,  
21 including Kroger's house brand of Potato Chips and Tim's Cascade Potato Chips.

22 8. Defendant Food 4 Less of Southern California, Inc. ("Food 4 Less of Southern  
23 Cal.") is a person in the course of doing business within the meaning of Health and Safety  
24 Code § 25249.11. Food 4 Less of Southern Cal. manufactures, distributes and/or sells Potato  
25 Chips that contain acrylamide, including Kroger's house brand of Potato Chips and Tim's  
26 Cascade Potato Chips.

27 9. Defendant The Kroger Company ("Kroger") is a person in the course of doing  
28 business within the meaning of Health and Safety Code § 25249.11. Kroger manufactures,

1 distributes and/or sells Potato Chips that contain acrylamide, including Kroger's house brand  
2 of Potato Chips and Tim's Cascade Potato Chips.

3 10. Fred Meyer Stores, Inc. ("Fred Meyer") is a person in the course of doing  
4 business within the meaning of Health and Safety Code § 25249.11. Fred Meyer  
5 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including Kroger's  
6 house brand of Potato Chips and Tim's Cascade Potato Chips.

7 11. Defendant New Albertsons, Inc. ("New Albertsons") is a person in the course of  
8 doing business within the meaning of Health and Safety Code § 25249.11. New Albertsons  
9 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including  
10 Albertson's house brand of Potato Chips, Pik Nik, Boulder Canyon, and Tim's Cascade Potato  
11 Chips.

12 12. Defendant Raley's, Inc. ("Raley's") is a person in the course of doing business  
13 within the meaning of Health and Safety Code § 25249.11. Raley's manufactures, distributes  
14 and/or sells Potato Chips that contain acrylamide, including Terra Potato Chips, Eat Smart  
15 Potato Chips, Pik Nik, and Tim's Cascade Potato Chips.

16 13. Defendant Ralphs Grocery Company ("Ralphs") is a person in the course of  
17 doing business within the meaning of Health and Safety Code § 25249.11. Ralphs  
18 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including Kroger's  
19 house brand of Potato Chips and Tim's Cascade Potato Chips.

20 14. Defendant Safeway, Inc. ("Safeway") is a person in the course of doing business  
21 within the meaning of Health and Safety Code § 25249.11. Safeway manufactures, distributes  
22 and/or sells Potato Chips that contain acrylamide, including Eat Smart Potato Chips, Pik Nik,  
23 Terra Potato Chips, and Tim's Cascade Potato Chips.

24 15. Defendant Smart & Final, Inc. ("Smart & Final") is a person in the course of  
25 doing business within the meaning of Health and Safety Code § 25249.11. Smart & Final  
26 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including Tim's  
27 Cascade Potato Chips.

28 ///

1           16. Defendant Stater Bros. Market (“Stater Bros.”) is a person in the course of doing  
2 business within the meaning of Health and Safety Code § 25249.11. Stater Bros.  
3 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including Pik Nik,  
4 Poore Brothers, and Tim’s Cascade Potato Chips.

5           17. Defendant Trader Joe’s Company (“Trader Joe’s”) is a person in the course of  
6 doing business within the meaning of Health and Safety Code § 25249.11. Trader Joe’s  
7 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including Trader  
8 Joe's house brand of Potato Chips.

9           18. Defendant The Vons Companies, Inc. (“Vons”) is a person in the course of doing  
10 business within the meaning of Health and Safety Code § 25249.11. Vons manufactures,  
11 distributes and/or sells Potato Chips that contain acrylamide, including Eat Smart Potato Chips,  
12 Pik Nik, Terra Potato Chips, and Tim's Cascade Potato Chips.

13           19. Defendant Whole Foods Market, Inc. (“Whole Foods”) is a person in the course  
14 of doing business within the meaning of Health and Safety Code § 25249.11. Whole Foods  
15 manufactures, distributes and/or sells Potato Chips that contain acrylamide, including Whole  
16 Foods’ house brand of Potato Chips (365), Michael Seasons’ Potato Chips, Terra Potato Chips  
17 and Boulder Canyon Potato Chips.

18           20. Defendants DOES 1 through 100 are persons in the course of doing business  
19 within the meaning of Health and Safety Code § 25249.11. Plaintiff is presently unaware of  
20 their true names and capacities and, therefore, Plaintiff sues Defendant DOES 1 through 100  
21 by such fictitious names, pursuant to California Code of Civil Procedure § 474. Plaintiff will  
22 amend this Complaint and include these Doe Defendants’ true names and capacities when they  
23 are ascertained.

24           21. As used herein, “Defendants” refers to: Albertsons, Foods Co., Food 4 Less of  
25 Cal., Food 4 Less of Southern Cal., Kroger, Fred Meyer, New Albertsons, Raley’s, Ralphs,  
26 Safeway, Smart & Final, Stater Bros., Trader Joe’s, Vons, Whole Foods and DOES 1 through  
27 100.

28       ///





1 as a private attorney general does not confer injury on ELF to satisfy Article III standing.  
2 *Mortera v. North America Mortgage Co.* (2001) 172 F.Supp.2d 1240, 1244.

3 **STATUTORY AND REGULATORY BACKGROUND**

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

7 29. Under Proposition 65:

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

13 Health and Safety Code § 25249.6

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

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

25 **FACTS**

26 32. Potato Chips are a food item consumed regularly by a significant portion of the  
27 population, particularly children. They are a common side item served with a wide variety of  
28 meals or eaten alone as a snack.

///

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

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

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

15 36. Defendants manufacture, distribute and/or sell Potato Chips for distribution and  
16 retail in California. Defendants' Potato Chips are intended for human consumption.

17 37. Defendants' Potato Chips contain acrylamide at levels above those established  
18 by the State of California as posing no significant risk.

19 38. Despite the fact that Defendants introduce Potato Chips which contain  
20 acrylamide into California's marketplace, Defendants fail to provide California consumers with  
21 a clear and reasonable warning that consuming Defendants' Potato Chips results in exposure to  
22 acrylamide.

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

28 ///

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

3 40. On or about June 14, 2007, Plaintiff provided a Notice of Violation to the  
4 California Attorney General, the District Attorney of every county in California, the City  
5 Attorney of each California city with a population over 750,000 and each named Defendant,  
6 pursuant to Health & Safety Code § 25249.7(d).

7 41. 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. Health and Safety Code § 25249.7(d). In  
12 compliance with Health and Safety Code § 25249.7(d) and 11 CCR § 3102, the Attorney  
13 General was served with a Certificate of Merit that included confidential factual information  
14 sufficient to establish the basis of the Certificate of Merit, including the identity of the  
15 individual(s) with whom Plaintiff consulted and the facts, studies, or other data that was  
16 reviewed by such person(s).

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

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

23 44. Defendants were informed of the presence of acrylamide in their Potato Chips  
24 from the various studies and information that have been published and are in the public domain,  
25 such as the information identified in Paragraphs 33 and 34, *supra*, and from the Notice of  
26 Violation provided by Plaintiff.

27 45. Defendants know and intend that California consumers, including children, will  
28 consume their Potato Chips, thereby exposing them to acrylamide.

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

5 **FIRST CAUSE OF ACTION**

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

7 47. Plaintiff incorporates by reference paragraphs 1 through 46 as if fully set forth  
8 herein.

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

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

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

19 51. Proposition 65 provides that any person “violating or threatening to violate” the  
20 statute may be enjoined in any court of competent jurisdiction. Health and Safety Code  
21 § 25249.7. “Threaten to violate” is defined to mean “to create a condition in which there is a  
22 substantial probability that a violation will occur.” Health and Safety Code § 25249.11(e).  
23 Violators are also liable for civil penalties of up to \$2,500 per day per violation, recoverable in a  
24 civil action. Health and Safety Code § 25249.7(b).

25 52. Defendants have engaged and continue to engage in conduct which violates  
26 Health and Safety Code § 25249.6. This conduct includes the manufacture, distribution and/or  
27 sale of Potato Chips that contain acrylamide into California markets without a clear and  
28 reasonable warning to California consumers that consumption of these Potato Chips results in

1 exposure to acrylamide, a chemical known to the State of California to cause cancer.  
2 Defendants have, therefore, in the course of doing business, knowingly and intentionally  
3 exposed individuals to a chemical known to the State of California to cause cancer without first  
4 providing a clear and reasonable warning.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for the following relief:

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

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

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

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

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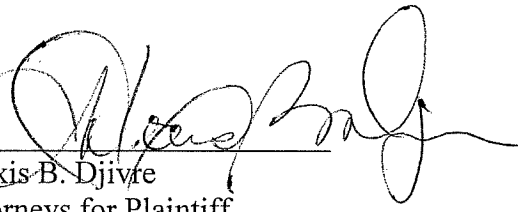
1 C. Reasonable attorneys' fees and costs; and

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

3  
4 Respectfully submitted,

5 DATED: January 29, 2008

ROSE, KLEIN & MARIAS LLP

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8 By:   
9 Alexis B. Djivre  
10 Attorneys for Plaintiff  
11 ENVIRONMENTAL LAW FOUNDATION  
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