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OF ORIGINAL FILED  
Los Angeles Superior Court

SEP 24 2009

John A. Clarke, Executive Officer

5 Counsel for PLAINTIFFS:  
6 Environmental World Watch, Inc. and Doris Nichols

By Javier Lopez Deput.  
JAVIER LOPEZ

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF LOS ANGELES - UNLIMITED  
9

10 ENVIRONMENTAL WORLD WATCH, )  
11 INC., IN THE PUBLIC INTEREST; )  
12 DORIS NICHOLS, an individual, on her )  
13 own behalf and on behalf of all others )  
14 similarly situated, )

14 PLAINTIFF,

15 v.

16 THE PROCTER AND GAMBLE )  
17 DISTRIBUTING COMPANY; THE )  
18 PROCTER AND GAMBLE )  
19 MANUFACTURING COMPANY; FRITO- )  
20 LAY, INC.; H.J. HEINZ COMPANY, LP; )  
21 COROZONAS FOOD, INC.; GRUMA )  
22 CORPORATION, KETTLE FOODS, INC.; )  
23 LANCE, INC.; RESERVE BRANDS, INC.; )  
24 SNAK KING CORPORATION; )  
25 SNYDER'S OF HANOVER, INC.; POST )  
26 FOODS DIVISION OF RALCORP )  
27 HOLDINGS, INC.; GENERAL MILLS, )  
28 INC.; GENERAL MILLS SALES, INC.; )  
KELLOGG USA, INC.; and DOES 1-100, )

25 DEFENDANTS. )

CASE NO. BC 415355

FIRST AMENDED COMPLAINT FOR DAMAGES:

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

1. VIOLATION OF HEALTH AND SAFETY CODE §25249.6
2. FRAUDULENT CONCEALMENT
3. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200
4. NEGLIGENCE PER SE

1 COME NOW the PLAINTIFFS, ENVIRONMENTAL WORLD WATCH, INC. and DORIS  
2 NICHOLS respectfully allege as follows:

3 GENERAL ALLEGATIONS

4 1. PLAINTIFF ENVIRONMENTAL WORLD WATCH, INC. ("EWW") is a corporation  
5 qualified to do business in the State of California and county of Los Angeles. EWW brings this action  
6 in the public interest as defined under Health & Safety Code §25249.7(d).  
7

8 2. PLAINTIFF, DORIS NICHOLS ("PLAINTIFF"), individually and on behalf of all  
9 others similarly situated, in her complaint against DEFENDANTS alleges as follows upon information  
10 and belief, based upon, inter alia, investigation conducted by and through her attorneys, except as to  
11 those allegations known to PLAINTIFF, which are based upon personal knowledge.  
12

13 3. PLAINTIFF DORIS NICHOLS is a single woman and resides in Ventura County,  
14 California. However, the events and exposures complained of herein have occurred in Los Angeles  
15 County, while also occurring in numerous other counties of California, including but not limited to San  
16 Diego County, Riverside County and Orange County. These exposures are ongoing as none of the  
17 DEFENDANTS' products contain the proper statutory warnings at the present time.  
18

19 4. DEFENDANT, THE PROCTER AND GAMBLE DISTRIBUTING COMPANY and  
20 THE PROCTER AND GAMBLE MANUFACTURING COMPANY (collectively hereinafter referred  
21 to as "P&G") are and at all times mentioned herein were qualified to do business in California, and at all  
22 times mentioned herein have conducted business throughout California, including the county of Los  
23 Angeles.  
24

25 5. DEFENDANT FRITO-LAY, INC. ("FRITO-LAY") is and at all times mentioned herein  
26 was qualified to do business in California and at all times mentioned herein has conducted business  
27 throughout California, including the county of Los Angeles.  
28

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

4           7.       DEFENDANT COROZONAS FOOD, INC. ("COROZONAS") is and at all times  
5 mentioned herein was qualified to do business in California and at all times mentioned herein has  
6 conducted business throughout California, including the county of Los Angeles.

7  
8           8.       DEFENDANT GRUMA CORPORATION dba Mission Foods Corporation ("GRUMA")  
9 is and at all times mentioned herein was qualified to do business in California and at all times mentioned  
10 herein has conducted business throughout California, including the county of Los Angeles.

11           9.       DEFENDANT KETTLE FOODS, INC. ("KETTLE") is and at all times mentioned  
12 herein was qualified to do business in California and at all times mentioned herein has conducted  
13 business throughout California, including the county of Los Angeles.

14  
15           10.      DEFENDANT LANCE, INC. ("LANCE") is and at all times mentioned herein was  
16 qualified to do business in California and at all times mentioned herein has conducted business  
17 throughout California, including the county of Los Angeles.

18  
19           11.      DEFENDANT RESERVE BRANDS, INC. ("RESERVE") is and at all times mentioned  
20 herein was qualified to do business in California and at all times mentioned herein has conducted  
21 business throughout California, including the county of Los Angeles.

22           12.      DEFENDANT SNAK KING CORPORATION ("SNAK KING") is and at all times  
23 mentioned herein was qualified to do business in California and at all times mentioned herein has  
24 conducted business throughout California, including the county of Los Angeles.

25  
26           13.      DEFENDANT SNYDER'S OF HANOVER, INC. ("SNYDERS") is and at all times  
27 mentioned herein was qualified to do business in California and at all times mentioned herein has  
28 conducted business throughout California, including the county of Los Angeles.

1 14. DEFENDANT POST FOODS DIVISION OF RALCORP HOLDINGS, INC. ("POST")  
2 is and at all times mentioned herein was qualified to do business in California and at all times mentioned  
3 herein has conducted business throughout California, including the county of Los Angeles.

4 15. DEFENDANT GENERAL MILLS, INC. AND GENERAL MILL SALES, INC.  
5 (hereinafter collectively referred to as "GENERAL MILLS") is and at all times mentioned herein was  
6 qualified to do business in California and at all times mentioned herein has conducted business  
7 throughout California, including the county of Los Angeles.  
8

9 16. DEFENDANT KELLOGG USA, INC. ("KELLOGG") is and at all times mentioned  
10 herein was qualified to do business in California and at all times mentioned herein has conducted  
11 business throughout California, including the county of Los Angeles.  
12

13 17. The true names and capacities, whether corporate, associated or otherwise, of  
14 DEFENDANTS DOES 1 - 100, inclusive, are unknown to PLAINTIFF, who therefore sues said  
15 DEFENDANTS by such fictitious names. PLAINTIFF will seek leave of Court to amend this complaint  
16 to show the true names and capacities of such DEFENDANTS when the same have been ascertained.  
17 PLAINTIFF is informed, believes, and thereon alleges that each fictitiously named DEFENDANT is  
18 responsible in some manner for the occurrences herein alleged and the damages caused thereby.  
19

20 18. At all times mentioned herein, the term "DEFENDANTS" includes the following: THE  
21 PROCTER AND GAMBLE DISTRIBUTING COMPANY; THE PROCTER AND GAMBLE  
22 MANUFACTURING COMPANY; FRITO-LAY, INC.; H.J. HEINZ COMPANY, LP; COROZONAS  
23 FOOD, INC.; GRUMA CORPORATION, KETTLE FOODS, INC.; LANCE, INC.; RESERVE  
24 BRANDS, INC.; SNAK KING CORPORATION; SNYDER'S OF HANOVER, INC.; POST FOODS  
25 DIVISION OF RALCORP HOLDINGS, INC.; GENERAL MILLS, INC.; GENERAL MILLS SALES,  
26 INC.; KELLOGG USA, INC., and DOES 1-100.  
27  
28

1 19. At all times mentioned each DEFENDANT was a "person in the course of doing  
2 business" within the meaning of Health & Safety Code, §25249.11, subd. (b). EWW is informed,  
3 believes, and thereon alleges that at all times mentioned herein each DEFENDANT had ten or more  
4 employees.

5 20. DEFENDANTS did not first give clear and reasonable warning in any manner or in any  
6 medium to persons in California who consume their products that their products contain acrylamide and  
7 the acrylamide contained in their consumer products causes cancer before DEFENDANTS knowingly  
8 and intentionally exposed such individuals to the acrylamide contained in their products.

9 21. Further, on information and belief DEFENDANTS have not given clear and reasonable  
10 warning in any manner or in any medium to persons in California who consume their products that their  
11 products contain acrylamide, even after the "Consent Judgments" entered by this court in "People v. The  
12 Procter and Gamble Co., et al", (BC338956 and Lead Case BC337618 (dismissed)).

13 22. EWW files this new COMPLAINT after dismissing a previous complaint without  
14 prejudice, alleging substantially identical statutory violations as against P&G and FRITO-LAY  
15 (Environmental World Watch, Inc. v. The Procter and Gamble Distributing Company, Frito-Lay, Inc., et  
16 al. Los Angeles Superior Court Case No. BC337618, related to LASC Case No. BC338956).

17 23. The Attorney General of California (hereinafter referred to as the "AG") took over those  
18 cases pursuant to the relevant statutory provision and requested that EWW dismiss its complaint such  
19 that the AG could pursue the matter. EWW complied with the request of the AG.

20 24. Thereafter, the AG continued to litigate the matter to Consent Judgment and entered into  
21 said Consent Judgments with DEFENDANTS THE PROCTER AND GAMBLE DISTRIBUTING  
22 COMPANY; THE PROCTER AND GAMBLE MANUFACTURING COMPANY; FRITO-LAY, INC.;  
23 H.J. HEINZ COMPANY, LP; KETTLE FOODS, INC.; LANCE, INC. and others on or about February  
24 2008.

1 25. EWW believes that these Consent Judgments are void under Villarruel v. Arreola, (1977)  
2 66 Cal.App.3d 309 and EWW will file the appropriate motion with this court to vacate said judgments.

3 26. EWW believes that the acrylamide contained in DEFENDANTS products causes cancer  
4 and has caused or will cause an "unreasonable risk", in that the DEFENDANTS possess the technical  
5 knowledge to lower asparagine levels which remove and/or drastically lower acrylamide levels, a known  
6 carcinogen and acute end-point toxin in the ready for sale product.

7  
8 27. The Court has jurisdiction over this lawsuit pursuant to Cal. Const., art. VI, § 10, which  
9 grants the Superior Court original jurisdiction in all causes except those given by statute to other trial  
10 courts.

11 **FIRST CAUSE OF ACTION**

12 (BY EWW AGAINST ALL DEFENDANTS FOR  
13 VIOLATION OF PROPOSITION 65 (Health & Saf.  
14 Code, §§ 25249.6, et seq.)

15  
16 28. PLAINTIFF refers to and incorporate by reference herein, paragraphs 1 through 27,  
17 inclusive of the First Amended Complaint as if set forth in full.

18 29. DEFENDANTS are and at all times mentioned herein were engaged in the business of  
19 manufacturing and/or distributing food products, including various products, that contain potato, corn  
20 and wheat as the basic ingredient in California.

21 30. DEFENDANT P&G is a business entity that manufactures sells and/or distributes to  
22 consumers within the State of California snack food products that contain acrylamide, including but not  
23 limited to potato chips products. These products include, but are not limited to, the following: Original  
24 Pringles; Sour Cream & Onion Pringles, Jalapeno Pringles, Prints Pringles, White Cheddar Pringles,  
25 Chili Cheese Pringles, Pizzalicious Pringles, Cheezums Pringles, Ranch Pringles, Spicy Cajun Pringles,  
26  
27  
28

1 Fiery Hot Pringles, Barbecue Pringles, Salt & Vinegar Pringles, Reduced Fat Pringles, and Snack Stacks  
2 Pringles.

3 31. DEFENDANT FRITO-LAY is a business entity that manufactures, sells and/or  
4 distributes to consumers within the State of California, snack food products that contain acrylamide  
5 including but not limited to, corn chips, tortilla chips and potato chips. These products include, but are  
6 not limited to, the following: Lay's Potato Chips, Doritos, Tostitos Tortilla Chips, Cheetos, Fritos Corn  
7 Chips, Sunchips, Baked!, Baken-Ets, Chester's Snacks, Flat Earth, Funyuns, Maui Style, Miss Vickie's,  
8 Munchies, Munchos, Rold Gold, Ruffles Potato Chips, Sabritones, Santitas, Stacy's, and Tostitos  
9 Tortilla Chips.

10  
11 32. DEFENDANT HEINZ is a business entity that manufactures, sells, and or distributes  
12 food products that contain acrylamide to consumers within the State of California, including but not  
13 limited to, potato products. These products include, but are not limited to, the following: Tgi Friday  
14 Potato Skins, Bagel Bites Brand, Ore-Ida Abc Fun Shapes, Ore-Ida Crispers, Ore-Ida Waffle Fries, Ore-  
15 Ida Cottage Fries, Ore-Ida Crispy Crunchies, Ore-Ida Tater Tots, Ore-Ida Mini Tater Tots, Ore-Ida  
16 Onion Tater Tots, Ore-Ida Crispy Crowns, Ore-Ida Pixie Crinkles, Ore-Ida Extra Crispy Easy Fries,  
17 Ore-Ida Roasted Garlic And Parmesan Potatoes, Ore-Ida Roasted Original, and Ore-Ida Golden Twirls.

18  
19 33. DEFENDANT COROZONAS is a business entity that manufactures, sells, and or  
20 distributes snack food products that contain acrylamide to consumers within the State of California,  
21 including but not limited to potato and tortilla chips. These products include, but are not limited to, the  
22 following chips: Slightly Salted Chips, Italiano 4 Cheese, Mediterranean Garlic & Herb, Pacific Rim  
23 Barbecue, Spicy Rio Habanero, Original, Margarita Lime, Squeeze Of Lime, and Lightly Salted.

24  
25 34. DEFENDANT GRUMA is a business entity that manufactures, sells, and or distributes  
26 snack food products that contain acrylamide to consumers within the State of California, including but  
27

1 not limited to tortilla chips. These products include, but are not limited to, the following: Mission  
2 Tortilla Chips and Strips.

3 35. DEFENDANT KETTLE is a business entity that manufactures, sells, and or distributes  
4 snack food products that contain acrylamide to consumers within the State of California, including but  
5 not limited to, potato chips. These products include, but are not limited to, the following: Kettle Sweet  
6 Onion, Death Valley, Backyard Barbeque, Sour Cream, Onion & Chive, Buffalo Bleu, Cheddar Beer,  
7 Classic Barbeque, Dill And Sour Cream, Honey Dijon, Island Jerk, Lightly Salted, New York Cheddar,  
8 Salt & Fresh Ground Pepper, Sea Salt And Vinegar, Spicy Thai, Tuscan Three Cheese, Unsalted, Yogurt  
9 And Green Onion, Sea Salt And Vinegar, Baked, Aged White Cheddar, Hickory Honey, Lightly Salted,  
10 Baked, Chipotle Chili, Organic Lightly Salted, Organic Sea Salt & Black Pepper, Organic Black Bean,  
11 Tortilla Blue Corn, Tortilla Chili Lime, Tortilla Multi Grain, Yellow Corn.

12  
13  
14 36. DEFENDANT RESERVE BRANDS is a business entity that manufactures, sells, and or  
15 distributes snack food products that contain acrylamide to consumers within the State of California,  
16 including but not limited to, potato and other snack chips. These products include, but are not limited to,  
17 the following: Sweet Onion Poppers, Honey Barbeque Poppers, Salt & Vinegar Poppers, Habanero  
18 Poppers, Cinnamon Sugar Bursts, White Cheddar Bursts, and Dulce De Leche Bursts

19  
20 37. DEFENDANT SNAK KING is a business entity that manufactures, sells, and or  
21 distributes snack food products that contain acrylamide to consumers within the State of California,  
22 including but not limited to, potato, tortilla and other snack chips. These products include, but are not  
23 limited to, the following: El Sabroso Guacachips, El Sabroso Fiesta Tortilla Chips, El Sabroso Salsitas,  
24 El Sabroso Santa Fe Reds Tortilla Chips, El Sabroso Jalapenitos, El Sabroso - White Corn Tortilla  
25 Strips, El Sabroso - Reduced Fat Tortilla Chips, El Sabroso - Restaurant Style Tortilla Chips, El Sabroso  
26 - Tortilla Rounds, El Sabroso - No Salt Tortilla Chips, El Sabroso Hot Cheese Curls, Snak King Cheese  
27 Curls, Snak King Hot Fries, and Snak King Cheese Puffs.  
28



1           38.     DEFENDANT LANCE is a business entity that manufactures, sells, and or distributes  
2 snack food products that contain acrylamide to consumers within the State of California, including but  
3 not limited to, popcorn, and potato and other snack chips. These products include, but are not limited to,  
4 the following: White Cheddar Popcorn, Stormy Salt & Vinegar Rumble Potato Chips, Wild Sour Cream  
5 & Onion Rumble Potato Chips, Chargin' Cheddar Sour Cream Rumble Potato Chips, Cheddar Charged  
6 Cheese Puffs, and Triple Cheese Twisters.  
7

8           39.     DEFENDANT SNYDERS is a business entity that manufactures, sells, and or distributes  
9 snack food products that contain acrylamide to consumers within the State of California, including but  
10 not limited to, pretzels and other snack chips. These products include, but are not limited to, the  
11 following: Butter Snaps, Homestyle Pretzels, Mini Pretzels, Dipping Sticks, Olde Tyme Pretzels, Rods,  
12 Honey Wheat Sticks, Pumpernickel & Onion Sticks, Olde Tyme Sticks, Snaps Sourdough Hards Box,  
13 Thins, Unsalted Mini Pretzels, Garlic Bread Nibblers, Honey Mustard & Onion Nibblers, Sourdough Fat  
14 Free Nibblers, Butter Sesame Sticks, Mini Pretzels, Snaps Pretzels, Sticks Pretzels, Pumpernickel &  
15 Onion Pretzel Crackers, Butter Sesame Pretzel Crackers, Original Pretzel Crackers, Barbeque Potato  
16 Chip, Original Potato Chip, Hot Buffalo Wing Potato Chip, Jalapeno Potato Chip, Kosher Dill Potato  
17 Chip, Ripple Potato Chip, Salt & Vinegar Potato Chip, Sour Cream & Onion Potato Chip, Fire Roasted  
18 Salsa, White Corn Tortillas, Yellow Corn Tortillas, Restaurant Style Tortillas, Smokey BBQ Potato  
19 Chips, Organic Honey Wheat Sticks, Organic Oat Bran Sticks, Organic Pumpernickel & Onion Sticks,  
20 Apple Cinnamon Cheddairs, Zesty Cheddar Cheddairs, Creamy Cucumber and Dill Veggie Crisps,  
21 Tomato, Romano & Olive Oil Soy Crisps, Parmesan, Garlic & Olive Oil Soy Crisps, Veggie Crisps,  
22 Sundried Tomato & Pesto Veggie Crisps, Cheddar & Jalapeno Veggie Crisps, CheddAirs, Potato Chips  
23 Lightly Salted, Potato Chips French Onion, Potato Chips Sweet Barbeque, Barbeque Potato Chip,  
24 Original Potato Chip, Butter Flavored Popcorn, Cheese Twist, White Cheddar Puffs, and Aged  
25 Cheddar Puffs.  
26  
27  
28

1           40.     DEFENDANT POST is a business entity that manufactures, sells, and or distributes  
2 snack food products that contain acrylamide to consumers within the State of California, including but  
3 not limited to, breakfast cereals. These products include, but are not limited to, the following: Grape-  
4 Nuts, Honey Bunches Of Oats, Pebbles; Post Alpha-Bits, Post Bran Flakes, Post Golden Crisp, Post  
5 Honeycomb, Post Raisin Bran, Post Selects, Post Shredded Wheat, Post Waffle Crisp, and Trail Mix  
6 Crunch.

7  
8           41.     DEFENDANT GENERAL MILLS is a business entity that manufactures, sells, and or  
9 distributes snack food products that contain acrylamide to consumers within the State of California,  
10 including but not limited to, breakfast cereals. These products include, but are not limited to, the  
11 following: Basic 4, Boo Berry, Buc-Wheats, Bunuelitos, Cheerios, Chex, Cinnamon Toast Crunch,  
12 Cocoa Puffs, Cookie Crisp, Count Chocula, Crazy Cow, Fiber One, Franken Berry, French Toast  
13 Crunch, General Mills Kaboom, Golden Grahams, Hidden Treasures, Honey Nut Cheerios, Honey Nut  
14 Clusters, Jurassic Park Crunch, Kix, Lucky Charms, Oatmeal Crisp, Raisin Nut Bran, Reese's Puffs,  
15 Total, Trix, and Wheaties.

16  
17           42.     DEFENDANT KELLOGGS is a business entity that manufactures, sells, and or  
18 distributes snack food products that contain acrylamide to consumers within the State of California,  
19 including but not limited to, breakfast cereals. These products include, but are not limited to, the  
20 following: All-Bran Products, Apple Jacks Cereal, Crunchmania Products, Kellogg's Cereals and  
21 Snacks, Kellogg's Cereal Straws, Kellogg's Cocoa Krispies Cereal, Kellogg's Corn Flake Crumbs,  
22 Kellogg's Corn Flakes Cereal, Kellogg's Corn Pops Cereal, Kellogg's Cracklin' Oat Bran Cereal,  
23 Kellogg's Crispix Cereal, Kellogg's Froot Loops Cereal, Kellogg's Frosted Flakes Cereal, Kellogg's  
24 Honey Smacks Cereal, Kellogg's Keebler Cookie Crunch Cereal, Kellogg's Low Fat Granola, Kellogg's  
25 Mini-Wheats Cereal, Kellogg's Mueslix Cereal, Kellogg's Nutri-Grain Products, Kellogg's Product 19  
26  
27  
28

1 Cereal, Kellogg's Raisin Bran Cereal, Kellogg's Raisin Bran Crunch Cereal, Kellogg's Smart Start  
2 Cereal, Kellogg's Smorz Cereal, Kellogg's Special K Products, Rice Krispies Cereal and Treats.

3 43. Acrylamide is a chemical known and listed under Proposition 65 as causing cancer. On  
4 January 1, 1990, acrylamide first appeared on the Governor's Proposition 65 list as a chemical known to  
5 cause cancer. (Cal. Code Regs., tit 22, §12000, subd. (b).) Pursuant to Health & Safety  
6 Code § 25249.9, twenty months after first appearing on the Governor's Proposition 65 list, acrylamide  
7 became subject to Proposition 65 warning requirements.  
8

9 44. Recent scientific studies released by the Office of Environmental Health Hazard  
10 Assessment ("OEHHA") and the Food and Drug Administration ("FDA") reveal that even at "lower  
11 bound" estimates of acrylamide intake, the level of exposure to acrylamide through the ingestion of  
12 certain vegetable and grain products heated above 275 F. is far greater than the no significant risk level  
13 ("NSRL"), or the allowed "safe harbor", for acrylamide.  
14

15 45. The current OEHHA safe harbor or NSRL of acrylamide intake is .2 ug/day and not any  
16 level is referred to as a future or planned level by OEHHA. The fact that a NSRL of .49 ug/day is  
17 contained and used as a warning trigger in the voidable Consent Judgments corroborates the conclusion  
18 that the authors of the aforementioned Consent Judgment anticipated that OEHHA would render a  
19 decision on alternative risk thresholds. This however did not occur. The current NSRL is the daily  
20 intake level calculated to result in one excess case of cancer in an exposed population of 100,000,  
21 assuming lifetime (70-year) exposure at the level in question.  
22

23 46. Because DEFENDANTS' products contain levels of acrylamide that did exceed the  
24 NSRL for acrylamide, and still do exceed the levels requiring warnings in Proposition 65 required that  
25 DEFENDANTS first give clear and reasonable warnings to persons in California who consume their  
26 products. Specifically that their products contain acrylamide and that the acrylamide contained in their  
27  
28

1 products causes cancer before DEFENDANTS knowingly and intentionally exposed such individuals to  
2 the acrylamide contained in their products.

3 47. DEFENDANTS did not first give clear and reasonable warning in any manner or in any  
4 medium to persons in California who consume their products that their products contain acrylamide and  
5 the acrylamide contained in their products causes cancer before DEFENDANTS knowingly and  
6 intentionally exposed such individuals to the acrylamide contained in their products.  
7

8 48. DEFENDANTS packaged their products without the warnings required by CCR, tit. 22  
9 §12601, which would have supplied the persons who actually ingest the products and suffered exposure  
10 to acrylamide with important health information required by this regulation. The exposures took place off  
11 of DEFENDANTS' properties and away from any source of conspicuous warning such as a sign at the  
12 point of sale.  
13

14 49. Therefore, EWW is informed, believes, and thereon alleges that from 1991 to the present  
15 DEFENDANTS have knowingly and intentionally exposed persons who consume their products in  
16 California to acrylamide, a chemical known and listed under Proposition 65 as causing cancer, without  
17 first giving clear and reasonable warning of such to the persons exposed or the persons who purchased  
18 their products. The persons exposed are persons who consumed DEFENDANTS' products by eating  
19 them. DEFENDANTS thereby violated Proposition 65. The route of exposure was through ingestion.  
20

21 50. PLAINTIFF's allegations concern a "consumer product exposure." A "consumer product  
22 exposure" is an exposure that results from a person's acquisition, purchase, storage, consumption or  
23 other reasonably foreseeable use of a consumer good or product. Since DEFENDANTS' products  
24 identified in Paragraphs 30 through 42 contain acrylamide, the reasonably foreseeable use and  
25 consumption by eating of said products resulted in exposures to acrylamide through ingestion.  
26

27 51. EWW commenced the original action that forms the basis of the previously dismissed  
28 complaint more than sixty (60) days after the date that EWW gave notice of the alleged violations the

1 DEFENDANTS in that action and to the Attorney General, and to applicable district attorneys and city  
2 attorneys in whose jurisdictions these exposures are alleged to have occurred.

3 52. EWW has commenced this action more than sixty (60) days after giving notice of the  
4 alleged violations to all of the DEFENDANTS herein, and to the Attorney General, and to applicable  
5 district attorneys and city attorneys in whose jurisdictions these exposures are alleged to have occurred.

6  
7 53. EWW is informed, believes, and thereon alleges that the neither the Attorney General,  
8 nor any applicable district attorney or city attorney, is diligently and effectively prosecuting an action for  
9 the violations as alleged in the EWW notices in conformity with the alleged violation of applicable  
10 warning statutes based on the supporting facts and for the relevant time period.

11 54. PLAINTIFF further alleges that DEFENDANTS have and are in violation of this warning  
12 statute and at all times relevant to the original action and complaint on August 3, 2005, DEFENDANTS  
13 knew they were exposing persons who consumed their products to acrylamide without first giving clear  
14 and reasonable warnings to persons who purchased their products in violation of, including but not  
15 limited to, CCR §12601(b)(5).

### 17 SECOND CAUSE OF ACTION

18 **(By ALL PLAINTIFFS Against ALL DEFENDANTS For Fraudulent Concealment)**

19 55. PLAINTIFF refers to and incorporate by reference herein, paragraphs 1 through 54,  
20 inclusive of the First Amended Complaint as if set forth in full.

21  
22 56. As set forth herein above, DEFENDANTS had both an implied and statutory duty to  
23 warn the individually named PLAINTIFF concerning the nature of the exposures from their facility,  
24 under Health & Safety Code §25249.6. DEFENDANTS' failure to so warn constitutes a concealment of  
25 material information with the intent to deceive PLAINTIFF, and cause them to refrain from taking steps  
26 to protect themselves, their property and their families. Further, in failing to warn and thereby  
27 concealing the toxic nature of their exposures, DEFENDANTS intended that PLAINTIFF would refrain  
28

1 from reporting DEFENDANTS' conduct to relevant authorities or taking legal action for damages or  
2 other relief.

3 57. In reliance on DEFENDANTS' failure to warn or apprise PLAINTIFF of the extent of  
4 DEFENDANTS' conduct and to toxic nature of their exposures, PLAINTIFF reasonably believed, until  
5 recently, that it was safe for their persons to consume the products that DEFENDANTS' continue to  
6 place into commerce in California absent the prerequisite warnings alleged herein, nor take legal action  
7 until recently.

8  
9 58. As a result, PLAINTIFF on behalf of the People of the State Of California has suffered  
10 damages and injury as alleged herein subject to proof at the time of trial.

11 **THIRD CAUSE OF ACTION**

12 **(By PLAINTIFF NICHOLS Unfair Business Practices Pursuant to Business and**  
13 **Professions Code §17200 et seq.)**

14  
15 59. PLAINTIFF refers to and incorporate by reference herein, paragraphs 1 through 58,  
16 inclusive of the First Amended Complaint as if set forth in full.

17 60. As a direct and proximate result of the negligence and wrongful conduct of  
18 DEFENDANTS, and each of them, PLAINTIFF NICHOLS suffered mental anxiety and loss of sleep  
19 over dangerous and health impacting exposures to DEFENDANTS consumer products. As a direct and  
20 proximate result of the illegal and unlawful acts of DEFENDANTS, PLAINTIFF NICHOLS and other  
21 persons similarly situated have been exposed to carcinogens, sold inferior or contaminated consumer  
22 products in a business practice for the benefit of DEFENDANTS profits at the detriment of its customers  
23 and PLAINTIFF.

24  
25 61. In addition to their violation of Civil Code §3479 et seq., as alleged herein,  
26 DEFENDANTS activities as described herein constitute other violations of law, including but not  
27 limited to the prohibition of selling "adulterated foods" in violation of 21 C.F.R. 109.3 et seq.  
28

1           62. All such violations have occurred during these DEFENDANTS normal business  
2 activities, rendering them unfair business practices within the meaning of California's Unfair  
3 Competition Laws, pursuant to Business and Professions Code §17200, et seq. DEFENDANTS have  
4 violated section 17200 by negligent conduct detrimental to PLAINTIFFS' health and well being.  
5 Accordingly DEFENDANTS are liable for the statutory penalty under Business and Professions Code  
6 §17206 and each day constitutes a separate violation. DEFENDANTS must make restitution to  
7 PLAINTIFFS and disgorge themselves from any illegal profits facilitated by the alleged conduct  
8 contained herein.  
9

10           63. DEFENDANTS have also created and continue to maintain a business practice that  
11 constitutes exposures creating "health risk" as defined at Civil Code §3479 et seq. Acrylamide is a  
12 preventable carcinogen and DEFENDANTS refuse to eliminate or reduce it below the No Significant  
13 Risk Level (NSRL) as defined at Health and Safety Code §25249.5 et seq.  
14

15           64. DEFENDANTS exposures, with the ability to lower or reduce the dangerous carcinogen  
16 acrylamide, are violations of The Food And Drug Administration prohibition against selling "adulterated  
17 foods", as delineated at 21 CFR 109.3. Section 109.3 sub-section (d) states in pertinent part:  
18

19           (d) ... When a naturally occurring poisonous or deleterious substance is increased  
20 to abnormal levels through mishandling or other *intervening acts*, it is an  
added poisonous or deleterious substance to the extent of such increase.

21           65. All these above violations of law constitute illegal business practices.

22           66. DEFENDANTS, through reckless and negligent conduct, have caused PLAINTIFFS' to  
23 suffer and the alleged exposures have occurred for decades without any prerequisite warning.  
24

25           67. This business practice of illegal conduct to the extent that the economic benefits enjoyed  
26 by DEFENDANTS gained by way of this improper and illegal activity; and exposures that cause cancer  
27 constitute egregious acts requiring remedy and injunctive relief.  
28

1 68. These acts are in violation of Business and Professions Code §17200 et seq. Any  
2 monetary benefit that DEFENDANTS have realized by this conduct with reckless indifference to the  
3 health impact on California consumers is recoverable in direct proportion to the anxiety and fear of  
4 cancer suffered by ALL PLAINTIFFS similarly exposed.

5 69. This alleged conduct, the failure to warn about exposures and the failure to reduce  
6 acrylamide concentrations in DEFENDANTS' products to the further financial benefit of  
7 DEFENDANTS were at the expense of the of the entire consumer base of DEFENDANTS' products.

8 70. These egregious failures to warn, and the failure to reduce acrylamide concentrations in  
9 DEFENDANTS' products have serious health impacts and DEFENDANTS' conduct constitutes a  
10 Nuisance as defined at Civil Code §3479. This same violation is actionable under Business and  
11 Professions Code §17200 to the extent that the DEFENDANTS' illegal business practices were  
12 profitable by its mere failures, avoidances of remedy and concealments, and at the direct and specific  
13 detriment to PLAINTIFFS'.  
14  
15  
16

17 **FOURTH CAUSE OF ACTION**

18 **NEGLIGENCE PER SE**

19 **(By All PLAINTIFFS Against All DEFENDANTS)**

20 71. PLAINTIFF hereby incorporates each and every allegation contained in paragraphs 1  
21 through 70 of the First Amended Complaint as though fully set forth herein.

22 72. At the time of the conduct as alleged in paragraphs 1-70 of this First Amended Complaint  
23 there was in effect a statute of the State of California, to wit, Health and Safety Code §25249, et seq.  
24 Civil Code §3479 et seq. which was intended for the protection, benefit and safety of all other  
25 consumers such as the PLAINTIFF herein.  
26  
27  
28



1           73.     At the time of the conduct as alleged in paragraphs 1-70 of this First Amended  
2 Complaint, DEFENDANTS' actions and conduct were in violation of Health and Safety Code §25249,  
3 et seq., Civil Code §3479, et seq and the FDA prohibition against selling "adulterated foods" as  
4 delineated at 21 CFR 109.3.

5           74.     As a direct and proximate result of the negligence and wrongful conduct of  
6 DEFENDANTS, and each of them, PLAINTIFF suffered grievous and disabling physical injuries. As a  
7 direct and proximate result of the negligence and wrongful conduct of DEFENDANTS, PLAINTIFF  
8 NICHOLS and other persons similarly situated have suffered grievous anxiety over fear of cancer.  
9 These damages for fear of damages have caused PLAINTIFF NICHOLS and others similarly situated to  
10 suffer general damages in an amount to be determined by proof at trial, but in excess of the minimum  
11 jurisdictional limits of this court.

12           75.     As a direct and proximate result of the negligence and wrongful conduct of  
13 DEFENDANTS, and each of them, PLAINTIFF was required to obtain medical services and treatment  
14 in an amount to be determined by proof at trial. PLAINTIFF will, in the future, be compelled to incur  
15 additional obligations for medical treatment to be determined by proof at trial.

16           76.     At the time of the conduct as alleged in paragraphs 1-70 of this First Amended  
17 Complaint, and the injuries sustained by PLAINTIFF as a consequence thereof, PLAINTIFF were  
18 prevented from attending their usual occupations and, as a result, sustained damages for lost earnings  
19 and lost benefits in proportion to the amount of time that they were prevented from attending their  
20 respective occupations, in a sum according to proof at the time of trial.

21           77.     As a further direct and proximate result of the negligence and wrongful conduct of  
22 DEFENDANTS, and each of them, as alleged above, PLAINTIFF has been, and will in the future be,  
23 unable to attend to their personal and business affairs and have suffered loss of income in an amount that  
24 is not yet fully known, to be determined by proof at trial.

1 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

2 ON THE FIRST CAUSE OF ACTION

- 3 1. For general damages according to proof;  
4 2. For special damages according to proof;  
5 3. For punitive damages according to proof;  
6 4. For all equitable relief available according to proof;  
7 5. For all penalties available under statute;  
8 6. For reasonable attorney's fees;  
9 7. For costs of suit herein incurred; and  
10 8. For such other and further relief as the Court deem proper.

11 ON THE SECOND CAUSE OF ACTION

- 12 1. For general damages according to proof;  
13 2. For special damages according to proof;  
14 3. For punitive damages according to proof;  
15 4. For all equitable relief available according to proof;  
16 5. For all penalties available under statute;  
17 6. For reasonable attorney's fees;  
18 7. For costs of suit herein incurred; and  
19 8. For such other and further relief as the Court deem proper.

20 ON THE THIRD CAUSE OF ACTION

- 21 1. For general damages according to proof;  
22 2. For special damages according to proof;  
23 3. For punitive damages according to proof;  
24 4. For all equitable relief available according to proof;

- 1 5. For all penalties available under statute;
- 2 6. For reasonable attorney's fees;
- 3 7. For costs of suit herein incurred; and
- 4 8. For such other and further relief as the Court deem proper.

5 ON THE FOURTH CAUSE OF ACTION

- 6 1. For general damages according to proof;
- 7 2. For special damages according to proof;
- 8 3. For punitive damages according to proof;
- 9 4. For all equitable relief available according to proof;
- 10 5. For all penalties available under statute;
- 11 6. For reasonable attorney's fees;
- 12 7. For costs of suit herein incurred; and
- 13 8. For such other and further relief as the Court deem proper.
- 14
- 15
- 16

17 Dated: September 22, 2009

ENVIRONMENTAL WORLD WATCH, INC.

18  
19  
20 By:   
21 MATTHEW E. JACKSON, ESQ.  
22 Attorney for PLAINTIFF  
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