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Los Angeles Superior Court

APR 13 2010

John A. Clarke, Executive Officer/Clerk  
By [Signature], Deputy  
KENT SPLEUN-BLAYTON

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10 Attorneys for Plaintiff,  
11 Council for Education and  
12 Research on Toxics ("CERT")

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

15 COUNCIL FOR EDUCATION AND )  
16 RESEARCH ON TOXICS, a California )  
17 corporation, acting as a private )  
18 attorney general in the public )  
19 interest; )

20 Plaintiff,

21 vs.

22 STARBUCKS CORPORATION, a )  
23 Washington corporation; )  
24 STARBUCKS HOLDING COMPANY, a )  
25 Washington corporation; )  
26 ELEVEN, INC., a Texas )  
27 corporation; BP AMERICA INC., a )  
28 Delaware corporation; BP )  
29 PRODUCTS NORTH AMERICA INC., a )  
30 Maryland corporation; BP WEST )  
31 COAST PRODUCTS LLC, a Delaware )  
32 corporation; GLORIA JEAN'S )  
33 GOURMET COFFEES CORP., an )  
34 Illinois corporation; GLORIA )  
35 JEAN'S GOURMET COFFEES )  
36 FRANCHISING CORP., an Illinois )  
37 corporation; INTERNATIONAL )  
38 COFFEE & TEA, LLC, a Delaware )  
39 corporation; IT'S A GRIND INC., )  
40 a California corporation; )  
41 PEET'S COFFEE & TEA, INC., a )  
42 Washington corporation; PRAISE )  
43 INTERNATIONAL NORTH AMERICA, )  
44 INC., a Delaware corporation; )  
45 SEATTLE COFFEE COMPANY, a )  
46 Georgia corporation; WINCHELL'S )

29 CASE NO. BC435759  
30 COMPLAINT ASSERTING CAUSES OF  
31 ACTION FOR  
32 (1) VIOLATIONS OF PROP. 65  
33 (HEALTH & SAFETY CODE §25249.6)  
34 (2) DECLARATORY RELIEF  
35 [INJUNCTIVE RELIEF AND  
36 PENALTIES SOUGHT]

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DISEASE, CANCER, AND TOXIC INJURIES

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FRANCHISING, LLC, a California )  
corporation; WINCHELL'S DONUT )  
HOUSES OPERATING COMPANY, L.P., )  
a corporation; YUM YUM DONUT )  
SHOPS, INC., a California )  
corporation; and DOES 1 through )  
100, INCLUSIVE, )  
)  
)  
Defendants. )  
)

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9. Defendant, Gloria Jean's Gourmet Coffees Franchising Corp., is an Illinois corporation which, at all material times hereto, was doing business throughout the State of California.

10. Defendant, International Coffee & Tea, LLC, is a Delaware corporation which, at all material times hereto, was doing business throughout the State of California.

11. Defendant, It's a Grind Inc., is a California corporation which, at all material times hereto, was doing business throughout the State of California.

12. Defendant, Peet's Coffee & Tea, Inc., is a Washington corporation which, at all material times hereto, was doing business throughout the State of California.

13. Defendant, Praise International North America, Inc., is a Delaware corporation which, at all material times hereto, was doing business throughout the State of California.

14. Defendant, Seattle Coffee Company, is a Georgia corporation which, at all material times hereto, was doing business throughout the State of California.

15. Defendant, Winchell's Franchising, LLC, is a California corporation which, at all material times hereto, was doing business throughout the State of California.

16. Defendant, Winchell's Donut Houses Operating Company, L.P., is a corporation which, at all material times hereto, was doing business throughout the State of California.

17. Defendant, Yum Yum Donut Shops, Inc., is a California corporation which, at all material times hereto, was doing business throughout the State of California.

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18. The true names and capacities of Defendants Does 1 through 100 are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this complaint to state the true names and capacities of said fictitious defendants when they have been ascertained.

19. Plaintiff is informed and believes and alleges, that at all material times, Defendants were acting in an individual, corporate, partnership, associate, conspiratorial or other capacity or as the agent, employee, co-conspirator, or alter ego of their co-defendants, and in doing the acts herein alleged, were acting within the course and scope of their authority as such partner, associate, agent, employee, co-conspirator, or alter ego, and with the permission, consent, knowledge, authorization, ratification and direction of their co-defendants.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this case pursuant to Cal. Const. Art. VI, § 10, and pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65").

21. CERT has satisfied all the jurisdictional conditions precedent to maintaining this action by mailing notices of the violations to the persons entitled to receive them, as required by Health and Safety Code § 25249.7, along with Certificates of Merit and the Summary of Proposition 65, all in accordance with the provisions of 27 C.C.R. § 25903.

22. All said notices of violation were mailed at least 70 days prior the date on which this action was filed (60 days for the notice

1 required by Health and Safety Code § 25249.7(d), plus 10 days for  
 2 mailing the notice to out-of-state defendants as required by Code of  
 3 Civil Procedure § 1013).

4 23. More than 70 days have passed since copies of the notices  
 5 were mailed to all the above-referenced governmental authorities, and  
 6 neither the Attorney General, any district attorney, nor any city  
 7 attorney has filed a complaint against defendants for the violations  
 8 alleged in the notices.

9 24. The County of Los Angeles is a proper venue for this action  
 10 pursuant to Code of Civil Procedure § 395 and Health and Safety Code  
 11 § 25249.7, and because the causes of action and many of the  
 12 violations arose in the County of Los Angeles.

#### 13 SUMMARY OF PROPOSITION 65

14  
 15  
 16 25. In November 1986, California voters overwhelmingly approved  
 17 an initiative to address growing concerns about exposure to toxic  
 18 chemicals. That initiative is now officially known as the Safe  
 19 Drinking Water and Toxic Enforcement Act, but is commonly referred  
 20 to by its original name, "Proposition 65."

21 26. Proposition 65 requires the Governor to publish a list of  
 22 chemicals that are known to the State of California to cause cancer,  
 23 birth defects or other reproductive harm. Agents that cause cancer  
 24 are called carcinogens; those that cause birth defects or other  
 25 reproductive harm are called reproductive toxicants. The list, which  
 26 must by law be updated at least once a year, contained more than 550  
 27 chemicals as of May 15, 1998.

28 27. Any company with ten or more employees that operates within

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1 the State or sells products in California must comply with the  
2 requirements of Proposition 65. Under Proposition 65, businesses are  
3 prohibited from knowingly discharging listed chemicals into sources  
4 of drinking water, and are required to provide a clear and reasonable  
5 warning before knowingly and intentionally exposing persons to a  
6 listed chemical.

7 28. Proposition 65 authorizes the Attorney General, district  
8 attorneys, and county and local prosecutors, as well as private  
9 citizens, to bring suit against violators to enjoin future violations  
10 and to obtain civil penalties for past violations.

11 29. Proposition 65's warning requirement serves as an incentive  
12 for business to substitute less toxic chemicals for listed chemicals  
13 and to warn the public where substitution is unfeasible.

14  
15 GENERAL ALLEGATIONS  
16

17 30. For many years, Defendants have engaged in the coffee  
18 business in California, selling ready-to-drink coffee to millions of  
19 customers throughout the State of California.

20 31. Since June 2002 and continuing to the present, Defendants  
21 have exposed and continue to expose numerous consumers purchasing  
22 ready-to-drink coffee at all of their businesses located within the  
23 State of California, including within the cities of Los Angeles, San  
24 Diego, San Francisco, and San Jose, to high levels of acrylamide,  
25 a toxic and carcinogenic chemical contained in Defendants' ready-to-  
26 drink coffee which is ingested by customers consuming said coffee.

27 32. Exposures to acrylamide unavoidably occurred via ingestion  
28 whenever a consumer purchased and thereafter consumed Defendants'

1 acrylamide-containing ready-to-drink coffee from June 2002 and  
2 continuing to the present.

3 33. Testing of Defendants' ready-to-drink coffee has shown that  
4 even a single, small (12-ounce) serving of ready-to-drink coffee  
5 contains approximately 10 times more acrylamide than the No  
6 Significant Risk Level ("NSRL") for acrylamide established by  
7 California's Office of Environmental Health Hazard Assessment  
8 ("OEHHA").

9 34. Acrylamide is a chemical known to the State of California  
10 to cause cancer and has been listed since January 1, 1990 as a  
11 carcinogen on the list of carcinogenic chemicals published by the  
12 Governor of the State of California at 27 California Code of  
13 Regulations § 27001.

14 35. Because acrylamide is listed in Proposition 65 as a  
15 carcinogen, pursuant to Health & Safety Code § 25249.6, Defendants  
16 were and are required to warn their customers that their ready-to-  
17 drink coffee contains a chemical known by the State of California to  
18 cause cancer before exposing said customers to acrylamide contained  
19 in their ready-to-drink coffee.

20 36. Since June 2002, Defendants have violated and continue to  
21 violate California Health & Safety Code § 25249.6 by exposing  
22 millions of individuals within the State of California to acrylamide  
23 without first giving clear and reasonable warnings to said  
24 individuals that their ready-to-drink coffee contains a chemical  
25 known by the State of California to cause cancer.

26 37. The violations of California Health & Safety Code § 25249.6  
27 are numerous and have occurred continuously and uninterrupted since  
28 June 2002 (shortly after the date on which acrylamide was discovered

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1 in high-temperature cooked, baked, and roasted foods) to the present  
2 at all of Defendants' businesses located within the State of  
3 California during this period where ready-to-drink coffee was  
4 purchased from Defendants' businesses. The timing of the violations  
5 is such that they occurred every moment that every individual within  
6 the State of California consumed Defendants' ready-to-drink coffee  
7 without first receiving the required Proposition 65 warnings from  
8 June 2002 and continuing to the present.

9 38. At all material times hereto, Defendants concealed from  
10 Californians and from Plaintiff that their ready-to-drink coffee  
11 contained a chemical known to the state to cause cancer.

12 39. At all material times hereto, Defendants fraudulently  
13 concealed from Plaintiff herein and from Californians exposed to  
14 their ready-to-drink coffee material facts concerning the toxic,  
15 neurotoxic, developmental, reproductive, and carcinogenic hazards of  
16 their ready-to-drink coffee.

17 40. Defendants' concealment of said carcinogenic and other  
18 toxic hazards of their ready-to-drink coffee was sufficiently  
19 complete that Plaintiff did not know, nor in the exercise of  
20 reasonable care could Plaintiff have known, that Defendants were  
21 knowingly and intentionally exposing Californians to carcinogens and  
22 reproductive toxins in violation of Proposition 65, until Plaintiff  
23 discovered such in December 2009.

24 41. By mailing Defendants notice of their violations of  
25 Proposition 65, the statute of limitations on Plaintiff's claims  
26 against Defendants is further equitably tolled.

27 //

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FIRST CAUSE OF ACTION

Violation of the Safe Drinking Water and Toxic Enforcement Act  
Exposing People to Carcinogen without Warning  
California Health and Safety Code § 25249.6

(By Plaintiff Against all Defendants)

42. Plaintiff refers to paragraphs 1 through 41, and, by this reference, incorporates said paragraphs hereat in full.

43. At all times material hereto, Defendants were doing business in the State of California.

44. In the course of doing business in the State of California, since at least June 2002 (shortly after the date on which acrylamide was discovered in high-temperature cooked, baked, and roasted foods) and continuing to the present, Defendants knowingly and intentionally exposed individuals to acrylamide in their ready-to-drink coffee, without first giving clear and reasonable warning to such individuals.

SECOND CAUSE OF ACTION

For Declaratory Relief

(By Plaintiff Against all Defendants)

45. Plaintiff refers to paragraphs 1 through 44 and, by this reference, incorporates said paragraphs hereat as though set forth in full.

46. An actual controversy has arisen and now exists between plaintiff and defendant.

47. Plaintiffs contend the following:

1 (A). That Defendants are legally obligated to provide  
 2 cancer hazard warnings on the containers of their ready-to-drink  
 3 coffee that they sell to the consuming public in the State of  
 4 California and that Defendants should be enjoined from failing to do  
 5 so.

6 (B). That Plaintiff's case, including the First Cause of  
 7 Action, against Defendants for Violation of the Safe Drinking Water  
 8 and Toxic Enforcement Act Exposing People to Carcinogen without  
 9 Warning under California Health and Safety Code § 25249.6  
 10 (Proposition 65), serves important public interests which should be  
 11 litigated and addressed expeditiously by the court.

12 (C). That the primary jurisdiction doctrine does not apply  
 13 to this case.

14 (D). That this action is entitled to preferential trial  
 15 setting.

16 (E). That the court cannot and ought not defer this action  
 17 to await potential or pending regulatory action by the California  
 18 Office of Environmental Health Hazard Assessment.

19 (F). That Defendants cannot establish that exposure to  
 20 acrylamide from their ready-to-drink coffee products does not pose  
 21 "no significant risk" in accordance with the "No Significant Risk  
 22 Level" established by the Office of Environmental Health Hazard  
 23 Assessment pursuant to 27 C.C.R. § 25705.

24 (G). That Defendants cannot establish that sound  
 25 considerations of public health support any alternative risk level,  
 26 pursuant to 27 C.C.R. § 25703.

27 (H). That Plaintiffs' claims for violations of Proposition  
 28 65 are not preempted by the federal Food, Drug and Cosmetic Act.

1           48. On information and belief, Defendants contend the  
2 following:

3           (A). That they are not legally obligated to provide cancer  
4 hazard warnings on the containers of ready-to-drink coffee that they  
5 sell to the consuming public in the State of California.

6           (B). That Plaintiffs' First Cause of Action is not in the  
7 public interest and that Plaintiffs' case should be dismissed.

8           (C). That the primary jurisdiction doctrine applies to  
9 this case.

10          (D). That this action is not entitled to preferential  
11 trial setting.

12          (E). That the court can and should defer this action  
13 pending regulatory action by the California Office of Environmental  
14 Health Hazard Assessment.

15          (F). That exposure to acrylamide from their ready-to-drink  
16 coffee products does poses "no significant risk" in accordance with  
17 the "No Significant Risk Level" established by the Office of  
18 Environmental Health Hazard Assessment under 27 C.C.R. § 25705.

19          (G). That sound considerations of public health support  
20 an alternative risk level, pursuant to 27 C.C.R. § 25703.

21          (H). That Plaintiffs' claims for violations of Proposition  
22 65 are preempted by the federal Food, Drug and Cosmetic Act.

23           49. Plaintiff desires a judicial determination of the  
24 respective rights and duties of the parties. Such a declaration is  
25 necessary and appropriate at the present time to determine  
26 Plaintiff's right to bring this action expeditiously to trial and to  
27 allow for a judicial determination of the rights of the parties and  
28 the merits of Plaintiff's claims.

PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

Injunctive Relief

1. For a temporary restraining order, preliminary injunction, permanent injunction, and such other injunctive relief as may be had pursuant to Health and Safety Code § 25249.7(a), enjoining Defendants from exposing persons to acrylamide in their ready-to-drink coffee sold in the State of California without first providing clear and reasonable warning that their ready-to-drink coffee contains a chemical known to the State of California to cause cancer.

Civil Penalties

2. For civil penalties, pursuant to Health & Safety Code § 25249.7(b), not to exceed \$2,500 per day for each and every violation by each and every Defendant of Proposition 65, in addition to all other penalties established by law.

Other Equitable Relief

3. For such other equitable relief, including other *cy pres* relief, as may be necessary to effectuate justice and to remedy adverse health effects of Californians exposed to acrylamide in Defendants' ready-to-drink coffee.

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Declaratory Relief

4. For a declaration of the rights and obligations of the parties.

Attorney's Fees

5. For Plaintiff's reasonable attorney's fees, pursuant to California Code of Civil Procedure § 1021.5.

Costs

6. For Plaintiff's costs of suit.

Other Relief

7. For such other relief as the Court deems proper and just.

DATED: April 13, 2010

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\_\_\_\_\_  
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Attorneys for Plaintiff  
Council for Education and  
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