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PRACTICE CONCENTRATED IN TOXIC
TORT & ENVIRONMENTAL LITIGATION
OCCUPATIONAL & ENVIRONMENTAL LUNG
DISEASE, CANCER, AND TOXIC INJURIES

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**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

MAY 09 2011

John A. Clarke Executive Officer/Clerk
By  Deputy
SHAUNYA WESLEY

6 Attorneys for Plaintiff,
7 Council for Education and
8 Research on Toxics ("CERT")

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 COUNCIL FOR EDUCATION AND)
12 RESEARCH ON TOXICS, a California)
13 corporation, acting as a private)
14 attorney general in the public)
15 interest;)

CASE NO. **BC461182**
COMPLAINT ASSERTING CAUSES OF
ACTION FOR:

16 Plaintiff,)
17 vs.)

(1) VIOLATIONS OF PROP. 65
(HEALTH & SAFETY CODE §25249.6)
(2) DECLARATORY RELIEF

18 BRAD BERRY COMPANY, LTD., a)
19 California corporation; BRISTOL)
20 FARMS, a California corporation;)
21 CARIBOU COFFEE COMPANY, INC., a)
22 Minnesota corporation; COSTCO)
23 WHOLESALE CORPORATION, a)
24 Washington corporation; DD IP)
25 HOLDER LLC, a Delaware)
26 corporation; DUNKIN' BRANDS,)
27 INC., a Delaware corporation;)
28 DUNKIN' DONUTS LLC, a Delaware)
corporation; F. GAVINA & SONS,)
INC., a California corporation;)
THE FOLGERS COFFEE COMPANY, a)
Delaware corporation; FOOD 4)
LESS OF CALIFORNIA, INC., a)
California corporation; FOOD 4)
LESS HOLDINGS, INC., a Delaware)
corporation; FOOD 4 LESS)
MERCHANDISING, INC., a)
California corporation; FOOD 4)
LESS OF SOUTHERN CALIFORNIA,)
INC., a California corporation;)
GODIVA CHOCOLATIER, INC., a New)
Jersey corporation; GREEN)
MOUNTAIN COFFEE ROASTERS, INC.,)
a Delaware corporation; ILLY)
CAFFE NORTH AMERICA, INC., a)

[INJUNCTIVE RELIEF AND
PENALTIES SOUGHT]

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1 Delaware corporation;)
 2 INTERNATIONAL COFFEE & TEA, LLC,)
 3 a Delaware corporation; THE J.M.)
 4 SMUCKER COMPANY, an Ohio)
 5 corporation; KRAFT FOODS INC., a)
 6 Virginia corporation; THE)
 7 KROEGER CO., an Ohio)
 8 corporation; MASSIMO ZANETTI)
 9 BEVERAGE USA, INC., a Delaware)
 10 corporation; MELITTA U.S.A.,)
 11 INC., a New Jersey corporation;)
 12 NESTLE USA, INC., a Delaware)
 13 corporation; NEWMAN'S OWN)
 14 ORGANICS - THE SECOND)
 15 GENERATION, INC., a California)
 16 corporation; PEET'S COFFEE &)
 17 TEA, INC., a Washington)
 18 corporation; RALPHS GROCERY)
 19 COMPANY, an Ohio corporation;)
 20 ROWLAND COFFEE ROASTERS, INC., a)
 21 Florida corporation; SAFEWAY)
 22 INC., a Delaware corporation;)
 23 SAM'S WEST, INC., an Arkansas)
 24 corporation; SARA LEE)
 25 CORPORATION, a Maryland)
 26 corporation; SEATTLE'S BEST)
 27 COFFEE LLC, a Washington)
 28 corporation; SMUCKER)
 FOODSERVICE, INC., a Delaware)
 corporation; SPROUTS FARMERS)
 MARKETS, LLC, an Arizona)
 corporation; STARBUCKS)
 CORPORATION, a Washington)
 corporation; STARBUCKS HOLDING)
 COMPANY, a Washington)
 corporation; STATER BROS.)
 MARKETS, a California)
 corporation; SUPERVALU INC., a)
 Delaware corporation; TARGET)
 CORPORATION, a Minnesota)
 corporation; TC GLOBAL, INC., a)
 Washington corporation; TRADER)
 JOE'S COMPANY, a California)
 corporation; TRADER JOE'S EAST)
 INC., a Massachusetts)
 corporation; VILORE FOODS)
 COMPANY, INC., a Texas)
 corporation; WAL-MART STORES,)
 INC., a Delaware corporation;)
 WHOLE FOODS MARKET CALIFORNIA,)
 INC., a California corporation;)
 WHOLE FOODS MARKET, INC., a)
 Texas corporation; and DOES 1)
 through 100, INCLUSIVE,)
 Defendants.)

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1 Plaintiff, Council for Education and Research on Toxics,
2 alleges:

3 1. Plaintiff, Council for Education and Research on Toxics
4 ("CERT"), is a California public benefit corporation whose charitable
5 purposes include education and research on toxic substances.
6 Plaintiff brings this action as a private attorney general in the
7 public interest pursuant to Health and Safety Code § 25249.7.

8 2. Defendant, Brad Berry Company, Ltd., is a California
9 corporation which, at all material times hereto, was doing business
10 throughout the State of California.

11 3. Defendant, Bristol Farms, is a California corporation
12 which, at all material times hereto, was doing business throughout
13 the State of California.

14 4. Defendant, Caribou Coffee Company, Inc., is a Minnesota
15 corporation which, at all material time hereto, was doing business
16 throughout the State of California.

17 5. Defendant, Costco Wholesale Corporation, is a Washington
18 corporation which, at all material times hereto, was doing business
19 throughout the State of California.

20 6. Defendant, DD IP Holder LLC, is a Delaware corporation
21 which, at all material times hereto, was doing business throughout
22 the State of California.

23 7. Defendant, Dunkin' Brands, Inc., is a Delaware corporation
24 which, at all material times hereto, was doing business throughout
25 the State of California.

26 8. Defendant, Dunkin' Donuts LLC, is a Delaware corporation
27 which, at all material times hereto, was doing business throughout
28 the State of California.

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1 9. Defendant, F. Gavina & Sons, Inc., is a California
2 corporation which, at all material times hereto, was doing business
3 throughout the State of California.

4 10. Defendant, The Folgers Coffee Company, is a Delaware
5 corporation which, at all material times hereto, was doing business
6 throughout the State of California.

7 11. Defendant, Food 4 Less of California, Inc., is a California
8 corporation which, at all material times hereto, was doing business
9 throughout the State of California.

10 12. Defendant, Food 4 Less Holdings, Inc., is a Delaware
11 corporation which, at all material times hereto, was doing business
12 throughout the State of California.

13 13. Defendant, Food 4 Less Merchandising, Inc., is a California
14 corporation which, at all material times hereto, was doing business
15 throughout the State of California.

16 14. Defendant, Food 4 Less of Southern California, Inc., is
17 a California corporation which, at all material times hereto, was
18 doing business throughout the State of California.

19 15. Defendant, Godiva Chocolatier, Inc., is a New Jersey
20 corporation which, at all material times hereto, was doing business
21 throughout the State of California.

22 16. Defendant, Green Mountain Coffee Roasters, Inc., is a
23 Delaware corporation which, at all material times hereto, was doing
24 business throughout the State of California.

25 17. Defendant, Illy Caffè North America, Inc., is a Delaware
26 corporation which, at all material times hereto, was doing business
27 throughout the State of California.

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

4 19. Defendant, The J.M. Smucker Company, is an Ohio corporation
5 which, at all material times hereto, was doing business throughout
6 the State of California.

7 20. Defendant, Kraft Foods Inc., is a Virginia corporation
8 which, at all material times hereto, was doing business throughout
9 the State of California.

10 21. Defendant, The Kroeger Co., is an Ohio corporation which,
11 at all material times hereto, was doing business throughout the State
12 of California.

13 22. Defendant, Massimo Zanetti Beverage USA, Inc., is a
14 Delaware corporation which, at all material times hereto, was doing
15 business throughout the State of California.

16 23. Defendant, Melitta U.S.A., Inc., is a New Jersey
17 corporation which, at all material times hereto, was doing business
18 throughout the State of California.

19 24. Defendant, Nestle USA, Inc., is a Delaware corporation
20 which, at all material times hereto, was doing business throughout
21 the State of California.

22 25. Defendant, Newman's Own Organics - The Second Generation,
23 Inc., is a California corporation which, at all material times
24 hereto, was doing business throughout the State of California.

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

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1 27. Defendant, Ralphs Grocery Company, is an Ohio corporation
2 which, at all material times hereto, was doing business throughout
3 the State of California.

4 28. Defendant, Rowland Coffee Roasters, Inc., is a Florida
5 corporation which, at all material times hereto, was doing business
6 throughout the State of California.

7 29. Defendant, Safeway Inc., is a Delaware corporation which,
8 at all material times hereto, was doing business throughout the State
9 of California.

10 30. Defendant, Sam's West, Inc., is an Arkansas corporation
11 which, at all material times hereto, was doing business throughout
12 the State of California.

13 31. Defendant, Sara Lee Corporation, is a Maryland corporation
14 which, at all material times hereto, was doing business throughout
15 the State of California.

16 32. Defendant, Seattle's Best Coffee LLC, is a Washington
17 corporation which, at all material times hereto, was doing business
18 throughout the State of California.

19 33. Defendant, Smucker Foodservice, Inc., is a Delaware
20 corporation which, at all material times hereto, was doing business
21 throughout the State of California.

22 34. Defendant, Sprouts Farmers Markets, LLC, is an Arizona
23 corporation which, at all material times hereto, was doing business
24 throughout the State of California.

25 35. Defendant, Starbucks Corporation, is a Washington
26 corporation which, at all material times hereto, was doing business
27 throughout the State of California.

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1 36. Defendant, Starbucks Holding Company, is a Washington
2 corporation which, at all material times hereto, was doing business
3 throughout the State of California.

4 37. Defendant, Stater Bros. Markets, is a California
5 corporation which, at all material times hereto, was doing business
6 throughout the State of California.

7 38. Defendant, Supervalu Inc., is a Delaware corporation which,
8 at all material times hereto, was doing business throughout the State
9 of California.

10 39. Defendant, Target Corporation, is a Minnesota corporation
11 which, at all material times hereto, was doing business throughout
12 the State of California.

13 40. Defendant, TC Global, Inc., is a Washington corporation
14 which, at all material times hereto, was doing business throughout
15 the State of California.

16 41. Defendant, Trader Joe's Company, is a California
17 corporation which, at all material times hereto, was doing business
18 throughout the State of California.

19 42. Defendant, Trader Joe's East Inc., is a Massachusetts
20 corporation which, at all material times hereto, was doing business
21 throughout the State of California.

22 43. Defendant, Vilore Foods Company, Inc., is a Texas
23 corporation which, at all material times hereto, was doing business
24 throughout the State of California.

25 44. Defendant, Wal-Mart Stores, Inc., is a Delaware corporation
26 which, at all material times hereto, was doing business throughout
27 the State of California.

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1 violations to the persons entitled to receive them, as required by
2 Health and Safety Code § 25249.7, along with Certificates of Merit
3 and the Summary of Proposition 65, all in accordance with the
4 provisions of 27 C.C.R. § 25903.

5 51. All said notices of violation were mailed at least 70 days
6 prior the date on which this action was filed (60 days for the notice
7 required by Health and Safety Code § 25249.7(d), plus 10 days for
8 mailing the notice to out-of-state defendants as required by Code of
9 Civil Procedure § 1013).

10 52. More than 70 days have passed since copies of the notices
11 were mailed to all the above-referenced governmental authorities, and
12 neither the Attorney General, any district attorney, nor any city
13 attorney has filed a complaint against defendants for the violations
14 alleged in the notices.

15 53. The County of Los Angeles is a proper venue for this action
16 pursuant to Code of Civil Procedure § 395 and Health and Safety Code
17 § 25249.7, and because the causes of action and many of the
18 violations arose in the County of Los Angeles.

19
20 SUMMARY OF PROPOSITION 65
21

22 54. In November 1986, California voters overwhelmingly approved
23 an initiative to address growing concerns about exposure to toxic
24 chemicals. That initiative is now officially known as the Safe
25 Drinking Water and Toxic Enforcement Act, but is commonly referred
26 to by its original name, "Proposition 65."

27 55. Proposition 65 requires the Governor to publish a list of
28 chemicals that are known to the State of California to cause cancer,

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1 birth defects or other reproductive harm. Agents that cause cancer
2 are called carcinogens; those that cause birth defects or other
3 reproductive harm are called reproductive toxicants. The list, which
4 must by law be updated at least once a year, contained more than 550
5 chemicals as of May 15, 1998.

6 56. Any company with ten or more employees that operates within
7 the State or sells products in California must comply with the
8 requirements of Proposition 65. Under Proposition 65, businesses are
9 prohibited from knowingly discharging listed chemicals into sources
10 of drinking water, and are required to provide a clear and reasonable
11 warning before knowingly and intentionally exposing persons to a
12 listed chemical.

13 57. Proposition 65 authorizes the Attorney General, district
14 attorneys, and county and local prosecutors, as well as private
15 citizens, to bring suit against violators to enjoin future violations
16 and to obtain civil penalties for past violations.

17 58. Proposition 65's warning requirement serves as an incentive
18 for business to substitute less toxic chemicals for listed chemicals
19 and to warn the public where substitution is unfeasible.

20
21 GENERAL ALLEGATIONS

22
23 59. For many years, Defendants have engaged in the coffee
24 business in California, selling coffee to millions of customers
25 throughout the State of California.

26 60. Since June 2002 and continuing to the present, Defendants
27 have exposed and continue to expose numerous consumers purchasing
28 coffee at all of their businesses located within the State of

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1 California, including within the cities of Los Angeles, San Diego,
2 San Francisco, and San Jose, to high levels of acrylamide, a toxic
3 and carcinogenic chemical contained in Defendants' coffee which is
4 ingested by customers consuming said coffee.

5 61. Exposures to acrylamide unavoidably occurred via ingestion
6 whenever a consumer purchased and thereafter consumed Defendants'
7 acrylamide-containing coffee from June 2002 and continuing to the
8 present.

9 62. Testing of coffee sold by Defendants in California has
10 shown that even a single, small (12-ounce) serving of Defendants'
11 coffee contains anywhere from 4 to well over 100 times more
12 acrylamide than the No Significant Risk Level ("NSRL") for acrylamide
13 established by California's Office of Environmental Health Hazard
14 Assessment ("OEHHA").

15 63. Acrylamide is a chemical known to the State of California
16 to cause cancer and has been listed since January 1, 1990, as a
17 carcinogen on the list of carcinogenic chemicals published by the
18 Governor of the State of California at 27 California Code of
19 Regulations § 27001.

20 64. Because acrylamide is listed in Proposition 65 as a
21 carcinogen, pursuant to Health & Safety Code § 25249.6, Defendants
22 were and are required to warn their customers that their coffee
23 contains a chemical known by the State of California to cause cancer
24 before exposing said customers to acrylamide contained in their
25 coffee.

26 65. Since June 2002, Defendants have violated and continue to
27 violate California Health & Safety Code § 25249.6 by exposing
28 millions of individuals within the State of California to acrylamide

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1 without first giving clear and reasonable warnings to said
2 individuals that their coffee contains a chemical known by the State
3 of California to cause cancer.

4 66. The violations of California Health & Safety Code § 25249.6
5 are numerous and have occurred continuously and uninterrupted since
6 June 2002 (shortly after the date on which acrylamide was discovered
7 in high-temperature cooked, baked, and roasted foods) to the present
8 at all of Defendants' businesses located within the State of
9 California during this period where coffee was purchased from
10 Defendants' businesses. The timing of the violations is such that
11 they occurred every moment that every individual within the State of
12 California consumed Defendants' coffee without first receiving the
13 required Proposition 65 warnings from June 2002 and continuing to the
14 present.

15 67. At all material times hereto, Defendants concealed from
16 Californians and from Plaintiff that their coffee contained a
17 chemical known to the state to cause cancer.

18 68. At all material times hereto, Defendants fraudulently
19 concealed from Plaintiff herein and from Californians exposed to
20 their coffee material facts concerning the toxic, neurotoxic,
21 developmental, reproductive, and carcinogenic hazards of their
22 coffee.

23 69. Defendants' concealment of said carcinogenic and other
24 toxic hazards of their coffee was sufficiently complete that
25 Plaintiff did not know, nor in the exercise of reasonable care could
26 Plaintiff have known, that Defendants were knowingly and
27 intentionally exposing Californians to carcinogens and reproductive
28 toxins in violation of Proposition 65, until Plaintiff discovered

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1 such in December 2009.

2 70. By mailing Defendants notice of their violations of
3 Proposition 65, the statute of limitations on Plaintiff's claims
4 against Defendants is further equitably tolled.

5
6 **FIRST CAUSE OF ACTION**

7 Violation of the Safe Drinking Water and Toxic Enforcement Act
8 Exposing People to Carcinogen without Warning
9 California Health and Safety Code § 25249.6
10 (By Plaintiff Against all Defendants)

11
12 71. Plaintiff refers to paragraphs 1 through 70, and, by this
13 reference, incorporates said paragraphs hereat in full.

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

16 73. In the course of doing business in the State of California,
17 since at least June 2002 (shortly after the date on which acrylamide
18 was discovered in high-temperature cooked, baked, and roasted foods)
19 and continuing to the present, Defendants knowingly and intentionally
20 exposed individuals to acrylamide in the coffee that Defendants sold,
21 without first giving clear and reasonable warning to such
22 individuals.

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SECOND CAUSE OF ACTION

For Declaratory Relief

(By Plaintiff Against all Defendants)

74. Plaintiff refers to paragraphs 1 through 73 and, by this reference, incorporates said paragraphs hereat as though set forth in full.

75. An actual controversy has arisen and now exists between Plaintiff and Defendants.

76. Plaintiff contends the following:

(A). That Defendants are legally obligated to provide cancer hazard warnings on the containers of the coffee that they sell to the consuming public in the State of California and that Defendants should be enjoined from failing to do so.

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

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

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

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

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1 (F). That Defendants cannot establish that exposure to
2 acrylamide from the coffee that they sell in California does not pose
3 "no significant risk" in accordance with the "No Significant Risk
4 Level" established by the Office of Environmental Health Hazard
5 Assessment pursuant to 27 C.C.R. § 25705.

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

9 (H). That Plaintiff's claims for violations of Proposition
10 65 are not preempted by the federal Food, Drug and Cosmetic Act.

11 77. On information and belief, Defendants contend the
12 following:

13 (A). That they are not legally obligated to provide cancer
14 hazard warnings on the containers of coffee that they sell to the
15 consuming public in the State of California.

16 (B). That Plaintiff's First Cause of Action is not in the
17 public interest and that Plaintiff's case should be dismissed.

18 (C). That the primary jurisdiction doctrine applies to
19 this case.

20 (D). That this action is not entitled to preferential
21 trial setting.

22 (E). That the court can and should defer this action
23 pending regulatory action by the California Office of Environmental
24 Health Hazard Assessment.

25 (F). That exposure to acrylamide from the coffee
26 Defendants sell in California poses "no significant risk" in
27 accordance with the "No Significant Risk Level" established by the
28 Office of Environmental Health Hazard Assessment.

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PRACTICE CONCENTRATED IN TOXIC
TORT & ENVIRONMENTAL LITIGATION
OCCUPATIONAL & ENVIRONMENTAL LUNG
DISEASE, CANCER, AND TOXIC INJURIES

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

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

78. Plaintiff desires a judicial determination of the respective rights and duties of the parties. Such a declaration is necessary and appropriate at the present time to determine Plaintiff's right to bring this action expeditiously to trial and to allow for a judicial determination of the rights of the parties and 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 coffee sold in the State of California without first providing clear and reasonable warning that the coffee Defendants sell in California 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.

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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 the coffee sold by Defendants in California.

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

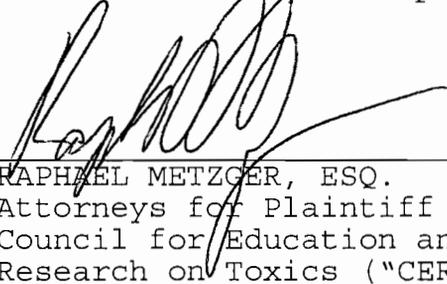
6. For Plaintiff's costs of suit.

Other Relief

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

DATED: May 5, 2011

METZGER LAW GROUP
A Professional Law Corporation



RAPHAEL METZGER, ESQ.
Attorneys for Plaintiff
Council for Education and
Research on Toxics ("CERT")