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CENTER FOR ENVIRONMENTAL HEALTH

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

RG15782610

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)

15 Plaintiff,)

16 v.)

17 SAVE MART SUPERMARKETS; THE HAIN)
18 CELESTIAL GROUP, INC.; TRADER JOE'S)
19 COMPANY; WALMART.COM USA LLC; and)
DOES 1 through 200, inclusive,)

20 Defendants.)
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Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to acrylamide, a chemical known to the
7 State of California to cause cancer. Such exposures have occurred, and continue to occur,
8 through the manufacture, distribution, sale, and consumption of Defendants' vegetable chips and
9 vegetable-based snack products (the "Products"). Consumers, including children, are exposed to
10 acrylamide when they consume the Products.

11 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*
12 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
13 to chemicals known to the State to cause cancer, birth defects, or other reproductive harm
14 without providing clear and reasonable warnings to individuals prior to their exposure.
15 Defendants introduce Products contaminated with significant quantities of acrylamide into the
16 California marketplace, exposing consumers of their Products, many of whom are children, to
17 acrylamide.

18 3. Despite the fact that Defendants expose children and other consumers to
19 acrylamide, Defendants provide no warnings whatsoever about the carcinogenic hazards
20 associated with acrylamide exposure. Defendants' conduct thus violates the warning provision
21 of Proposition 65. Health & Safety Code § 25249.6.

22 **PARTIES**

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
24 non-profit corporation dedicated to protecting the public from environmental health hazards and
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
26 State of California. CEH is a "person" within the meaning of Health & Safety Code
27 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
28 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy

1 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
2 cases have resulted in significant public benefit, including the reformulation of thousands of
3 products to remove toxic chemicals and to make them safer. CEH also provides information to
4 Californians about the health risks associated with exposure to hazardous substances, where
5 manufacturers and other responsible parties fail to do so.

6 5. Defendant SAVE MART SUPERMARKETS is a person in the course of
7 doing business within the meaning of Health & Safety Code § 25249.11. The Hain Celestial
8 Group, Inc. manufactures, distributes, and/or sells the Products for sale and use in California.

9 6. Defendant THE HAIN CELESTIAL GROUP, INC. is a person in the
10 course of doing business within the meaning of Health & Safety Code § 25249.11. Save Mart
11 Supermarkets manufactures, distributes, and/or sells the Products for sale and use in California.

12 7. Defendant TRADER JOE'S COMPANY is a person in the course of doing
13 business within the meaning of Health & Safety Code § 25249.11. Trader Joe's Company
14 manufactures, distributes, and/or sells the Products for sale and use in California.

15 8. Defendant WALMART.COM USA LLC is a person in the course of doing
16 business within the meaning of Health & Safety Code § 25249.11. Walmart.com USA LLC
17 manufactures, distributes, and/or sells the Products for sale and use in California.

18 9. DOES 1 through 200 are each a person in the course of doing business
19 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,
20 distribute, and/or sell the Products for sale or use in California.

21 10. The true names of DOES 1 through 200 are unknown to CEH at this time.
22 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

23 11. The defendants identified in paragraphs 5 through 8 and DOES 1 through
24 200 are collectively referred to herein as "Defendants."

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13. This Court has jurisdiction over Defendants because each is a business entity that does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market through the sale, marketing, or use of the Products in California and/or by having such other contacts with California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

BACKGROUND FACTS

16. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by the State of California as known to cause cancer, birth defects, or other reproductive harm above certain levels without a “clear and reasonable warning” unless the business responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent part:

17. On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On January 1, 1991, one year after it was listed as a chemical known to cause cancer, acrylamide became subject to the clear and reasonable warning

1 requirement regarding carcinogens under Proposition 65. 27 California Code of Regulations
2 ("C.C.R.") § 27001(b); Health & Safety Code § 25249.10(b).

3 18. Acrylamide is found in certain food products, including the Products at
4 issue. Acrylamide in food such as the Products is of concern in light of evidence that exposure to
5 acrylamide causes cancer. *See generally* Beland, F., *et al.*, "Carcinogenicity of acrylamide in
6 B6C3F1 mice and F344/N rats from a 2-year drinking water exposure," *Food & Chemical*
7 *Toxicology* (2013) Vol 51:149; World Health Organization International Agency for Research
8 on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans* (1994) Vol.
9 60:389. A 2012 study also found that exposure to acrylamide is widespread. *See generally* Vogt,
10 R., *et al.*, "Cancer and non-cancer health effects from food contaminant exposures for children
11 and adults in California: a risk assessment," *Environmental Health* (2012) Vol. 11:83

12 19. Defendants' Products contain sufficient quantities of acrylamide such that
13 consumers, including children, who consume the Products are exposed to acrylamide. The
14 primary route of exposure for the violations is direct ingestion when consumers eat the Products.
15 These exposures occur in homes, schools, workplaces, and everywhere else throughout
16 California where the products are consumed.

17 20. No clear and reasonable warning is provided with the Products regarding
18 the carcinogenic hazards of acrylamide.

19 21. Any person acting in the public interest has standing to enforce violations
20 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
21 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
22 action within such time. Health & Safety Code § 25249.7(d).

23 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
24 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
25 the District Attorneys of every county in California, the City Attorneys of every California city
26 with a population greater than 750,000, and to each of the named Defendants. In compliance
27 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
28 following information: (1) the name and address of each violator; (2) the statute violated; (3) the

1 time period during which violations occurred; (4) specific descriptions of the violations,
2 including (a) the routes of exposure to acrylamide from the Products, and (b) the specific type of
3 Products sold and used in violation of Proposition 65; and (5) the name of the specific
4 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

5 23. CEH also sent a Certificate of Merit for each Notice to the California
6 Attorney General, the District Attorneys of every county in California, the City Attorneys of
7 every California city with a population greater than 750,000, and to each of the named
8 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each
9 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with
10 relevant and appropriate experience or expertise who reviewed facts, studies, or other data
11 regarding the exposures to acrylamide alleged in each Notice; and (2) based on the information
12 obtained through such consultations, believes that there is a reasonable and meritorious case for a
13 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
14 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney
15 General included factual information – provided on a confidential basis – sufficient to establish
16 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
17 and the facts, studies, or other data reviewed by such persons.

18 24. None of the public prosecutors with the authority to prosecute violations
19 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
20 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
21 of CEH's Notices.

22 25. Defendants both know and intend that individuals, including children, will
23 consume the Products, thus exposing them to acrylamide.

24 26. Under Proposition 65, an exposure is "knowing" where the party
25 responsible for such exposure has:

26 knowledge of the fact that a[n] . . . exposure to a chemical listed
27 pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No
28 knowledge that the . . . exposure is unlawful is required.

1 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
2 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
3 § 12201).

4 27. Defendants have been informed of the acrylamide in their Products by the
5 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

6 28. Defendants also have constructive knowledge that their Products contain
7 acrylamide due to the widespread media coverage concerning the problem of acrylamide in
8 consumer products in general.

9 29. As companies that manufacture, import, distribute, and/or sell the Products
10 for use in the California marketplace, Defendants know or should know that the Products contain
11 acrylamide and that individuals who consume the Products will be exposed to acrylamide. The
12 acrylamide exposures to consumers who consume the Products are a natural and foreseeable
13 consequence of Defendants' placing the Products into the stream of commerce.

14 30. Nevertheless, Defendants continue to expose consumers, including
15 children, to acrylamide without prior clear and reasonable warnings regarding the carcinogenic
16 hazards of acrylamide.

17 31. CEH has engaged in good-faith efforts to resolve the claims alleged herein
18 prior to filing this Complaint.

19 32. Any person "violating or threatening to violate" Proposition 65 may be
20 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to
21 violate" is defined to mean "to create a condition in which there is a substantial probability that a
22 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
23 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

24 **FIRST CAUSE OF ACTION**

25 **(Violations of the Health & Safety Code § 25249.6)**

26 33. CEH realleges and incorporates by reference as if specifically set forth
27 herein Paragraphs 1 through 32, inclusive.

28 34. By placing the Products into the stream of commerce, each Defendant is a

1 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

2 35. Acrylamide is a chemical listed by the State of California as known to
3 cause cancer.

4 36. Each Defendant knows that average use of the Products will expose users
5 of its Products to acrylamide. Each Defendant intends that its Products be used in a manner that
6 results in exposures to acrylamide from the Products.

7 37. Defendants have failed, and continue to fail, to provide clear and
8 reasonable warnings regarding the carcinogenicity of acrylamide to users of the Products.

9 38. By committing the acts alleged above, Defendants have at all times
10 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
11 individuals to acrylamide without first giving clear and reasonable warnings to such individuals
12 regarding the carcinogenicity of acrylamide.

13 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

14 **PRAYER FOR RELIEF**

15 Wherefore, CEH prays for judgment against Defendants as follows:

16 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
17 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation
18 of Proposition 65 according to proof;

19 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
20 preliminarily and permanently enjoin Defendants from offering Products for sale in
21 California without providing prior clear and reasonable warnings, as CEH shall specify in further
22 application to the Court;

23 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order
24 Defendants to take action to stop ongoing unwarned exposures to acrylamide resulting from use
25 of Products sold by Defendants, as CEH shall specify in further application to the Court;

26 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
27 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

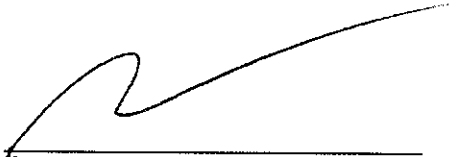
28 5. That the Court grant such other and further relief as may be just and

1 proper.

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3 Dated: August __, 2015

Respectfully submitted,

4 LEXINGTON LAW GROUP

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Howard Hirsch

8 Attorneys for Plaintiff

9 CENTER FOR ENVIRONMENTAL HEALTH