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CENTER FOR ENVIRONMENTAL HEALTH  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11

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

14 Plaintiff, )

15 v. )

16 FOODSHOULDTASTEGOOD, INC.; )  
17 GENERAL MILLS, INC.; FGF BRANDS, )  
INC.; KETTLE FOODS, INC.; LATE JULY )  
18 SNACKS LLC; LIVE BETTER BRANDS )  
LLC; MILTON'S BAKING COMPANY, LLC; )  
19 SAVE MART SUPERMARKETS; WHOLE )  
FOODS MARKET CALIFORNIA, INC.; MRS. )  
20 GOOCH'S NATURAL FOOD MARKETS, )  
INC.; NATURALLY HOMEGROWN FOODS )  
21 LTD.; and DOES 1 through 300, inclusive, )

22 Defendants. )  
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ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 02 2017

CLERK OF THE SUPERIOR COURT  
By Jamie Thomas  
JAMIE THOMAS, Deputy

Case No. RG17851469

**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 two types of food products: (i)  
9 fried or baked potato or sweet potato based snack foods (the “Potato or Sweet Potato Snack  
10 Products”); and (ii) fried or baked vegetable chips (the “Vegetable Chip Products”). Potato or  
11 Sweet Potato Snack Products and Vegetable Chip Products are collectively referred to herein as  
12 “Products.” Consumers, including children, are exposed to acrylamide when they consume the  
13 Products.

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

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

25 **PARTIES**

26 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a  
27 non-profit corporation dedicated to protecting the public from environmental health hazards and  
28 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the

1 State of California. CEH is a “person” within the meaning of Health & Safety Code  
2 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &  
3 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy  
4 group that has prosecuted a large number of Proposition 65 cases in the public interest. These  
5 cases have resulted in significant public benefit, including the reformulation of thousands of  
6 products to remove toxic chemicals and to make them safer. CEH also provides information to  
7 Californians about the health risks associated with exposure to hazardous substances, where  
8 manufacturers and other responsible parties fail to do so.

9           5. Defendant FOODSHOULDTASTEGOOD, INC. is a person in the course  
10 of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
11 FOODSHOULDTASTEGOOD, INC. manufactures, distributes, and/or sells Potato or Sweet  
12 Potato Snack Products for sale and consumption in California.

13           6. Defendant GENERAL MILLS, INC. is a person in the course of doing  
14 business within the meaning of Health & Safety Code § 25249.11. Defendant GENERAL  
15 MILLS, INC. manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for  
16 sale and consumption in California.

17           7. Defendant FGF BRANDS, INC. is a person in the course of doing  
18 business within the meaning of Health & Safety Code § 25249.11. Defendant FGF BRANDS,  
19 INC. manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for sale and  
20 consumption in California.

21           8. Defendant KETTLE FOODS, INC. is a person in the course of doing  
22 business within the meaning of Health & Safety Code § 25249.11. Defendant KETTLE FOODS,  
23 INC. manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for sale and  
24 consumption in California.

25           9. Defendant LATE JULY SNACKS LLC is a person in the course of doing  
26 business within the meaning of Health & Safety Code § 25249.11. Defendant LATE JULY  
27 SNACKS LLC manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for  
28 sale and consumption in California.

1                   10. Defendant LIVE BETTER BRANDS LLC is a person in the course of  
2 doing business within the meaning of Health & Safety Code § 25249.11. Defendant LIVE  
3 BETTER BRANDS LLC manufactures, distributes, and/or sells Potato or Sweet Potato Snack  
4 Products for sale and consumption in California.

5                   11. Defendant MILTON’S BAKING COMPANY, LLC is a person in the  
6 course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
7 MILTON’S BAKING COMPANY, LLC manufactures, distributes, and/or sells Potato or Sweet  
8 Potato Snack Products for sale and consumption in California.

9                   12. Defendant SAVE MART SUPERMARKETS is a person in the course of  
10 doing business within the meaning of Health & Safety Code § 25249.11. Defendant SAVE  
11 MART SUPERMARKETS manufactures, distributes, and/or sells Potato or Sweet Potato Snack  
12 Products for sale and consumption in California. CEH’s allegations and claims against  
13 Defendant SAVE MART SUPERMARKETS in this action are limited to Potato or Sweet Potato  
14 Snack Products sold by Defendants FGF BRANDS, INC. and LATE JULY SNACKS LLC.

15                   13. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. is a person  
16 in the course of doing business within the meaning of Health & Safety Code § 25249.11.  
17 Defendant WHOLE FOODS MARKET CALIFORNIA, INC. manufactures, distributes, and/or  
18 sells Potato or Sweet Potato Snack Products for sale and consumption in California. CEH’s  
19 allegations and claims against Defendant WHOLE FOODS MARKET CALIFORNIA, INC. in  
20 this action are limited to Potato or Sweet Potato Snack Products sold by Bountiful Larder Inc.  
21 and Defendant MILTON’S BAKING COMPANY, LLC.

22                   14. Defendant MRS. GOOCH’S NATURAL FOOD MARKETS, INC. is a  
23 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.  
24 Defendant MRS. GOOCH’S NATURAL FOOD MARKETS, INC. manufactures, distributes,  
25 and/or sells Potato or Sweet Potato Snack Products for sale and consumption in California.  
26 CEH’s allegations and claims against Defendant MRS. GOOCH’S NATURAL FOOD  
27 MARKETS, INC. in this action are limited to Potato or Sweet Potato Snack Products sold by  
28 Bountiful Larder Inc. and Defendant MILTON’S BAKING COMPANY, LLC.

1           15. Defendant NATURALLY HOMEGROWN FOODS LTD. is a person in  
2 the course of doing business within the meaning of Health & Safety Code § 25249.11.  
3 Defendant NATURALLY HOMEGROWN FOODS LTD. manufactures, distributes, and/or sells  
4 Vegetable Chip Products for sale and consumption in California.

5           16. DOES 1 through 100 are each a person in the course of doing business  
6 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture,  
7 distribute, and/or sell Potato or Sweet Potato Snack Products for sale and consumption in  
8 California. Defendants FOODSHOULDTASTEGOOD, INC.; GENERAL MILLS, INC.; FGF  
9 BRANDS, INC.; KETTLE FOODS, INC.; LATE JULY SNACKS LLC; LIVE BETTER  
10 BRANDS LLC; MILTON’S BAKING COMPANY, LLC; SAVE MART SUPERMARKETS;  
11 WHOLE FOODS MARKET CALIFORNIA, INC.; MRS. GOOCH’S NATURAL FOOD  
12 MARKETS, INC.; and DOES 1 through 100 are collectively referred to herein as “Potato or  
13 Sweet Potato Snack Products Defendants.”

14           17. DOES 101 through 200 are each a person in the course of doing business  
15 within the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,  
16 distribute, and/or sell Vegetable Chip Products for sale and consumption in California.  
17 Defendant NATURALLY HOMEGROWN FOODS LTD. and DOES 101 through 200 are  
18 collectively referred to herein as “Vegetable Chip Products Defendants.”

19           18. DOES 201 through 300 are each a person in the course of doing business  
20 within the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,  
21 distribute, and/or sell Potato or Sweet Potato Snack Products and Vegetable Chip Products for  
22 sale and consumption in California.

23           19. The true names of DOES 1 through 300 are either unknown to CEH at this  
24 time or the applicable time period before which CEH may file a Proposition 65 action has not  
25 run. When their identities are ascertained or the applicable time period before which CEH may  
26 file a Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

27           20. The defendants identified in paragraphs 5 through 15 and DOES 1 through  
28 300 are collectively referred to herein as “Defendants.”

1 **JURISDICTION AND VENUE**

2 21. The Court has jurisdiction over this action pursuant to Health & Safety  
3 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
4 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
5 to other trial courts.

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

12 23. Venue is proper in Alameda County Superior Court because one or more of  
13 the violations arise in the County of Alameda.

14 **BACKGROUND FACTS**

15 24. The People of the State of California have declared by initiative under  
16 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth  
17 defects, or other reproductive harm.” Proposition 65, § 1(b).

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

23 No person in the course of doing business shall knowingly and  
24 intentionally expose any individual to a chemical known to the  
25 state to cause cancer or reproductive toxicity without first giving  
clear and reasonable warning to such individual. . .

26 26. On January 1, 1990, the State of California officially listed acrylamide as a  
27 chemical known to cause cancer. On January 1, 1991, one year after it was listed as a chemical  
28 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). Acrylamide’s listing as a known  
3 carcinogen is well supported by numerous scientific studies establishing a link between  
4 acrylamide exposure and cancer. *See generally* Beland, F., *et al.*, “Carcinogenicity of acrylamide  
5 in B6C3F1 mice and F344/N rats from a 2-year drinking water exposure,” *Food & Chemical*  
6 *Toxicology* (2013) Vol 51:149; World Health Organization International Agency for Research  
7 on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans* (1994) Vol.  
8 60:389; Vogt, R., *et al.*, “Cancer and non-cancer health effects from food contaminant exposures  
9 for children and adults in California: a risk assessment,” *Environmental Health* (2012) Vol.  
10 11:83.

11           27. Acrylamide is found in cigarette smoke and is produced industrially for  
12 use in products such as plastics, grouts, water treatment products, and cosmetics. Acrylamide is  
13 also found in certain food products, including the Products at issue. Acrylamide is formed during  
14 the manufacturing process when the Products are cooked at high temperatures. The problem of  
15 acrylamide in food products first came to light in 2002 when researchers at the Swedish National  
16 Food Agency and Stockholm University reported finding acrylamide in a variety of fried and  
17 baked foods. Since then, numerous government reports and academic studies have confirmed the  
18 presence of high levels of acrylamide in certain foods, including the Products. *See, e.g.*, U.S.  
19 Food and Drug Administration (“FDA”), “Survey Data on Acrylamide in Food: Individual Food  
20 Products,” publicly available online at [http://www.fda.gov/Food/FoodborneIllnessContaminants/  
21 ChemicalContaminants/ucm053549.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053549.htm) (updated July 2006); FDA, “Survey Data on Acrylamide  
22 in Food: Total Diet Study Results,” publicly available online at [http://www.fda.gov/Food/  
23 FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm) (updated October  
24 2006).

25           28. Defendants’ Products contain sufficient quantities of acrylamide such that  
26 consumers, including children, who consume the Products are exposed to acrylamide. The route  
27 of exposure for the violations is direct ingestion when consumers eat the Products. These  
28 exposures occur in homes, schools, workplaces, and everywhere else throughout California

1 where the products are consumed.

2           29. No clear and reasonable warning is provided with the Products regarding  
3 the carcinogenic hazards of acrylamide.

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

8           31. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
9 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, to  
10 the District Attorneys of every county in California, to the City Attorneys of every California city  
11 with a population greater than 750,000, and to each of the named Defendants. In compliance  
12 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
13 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
14 time period during which violations occurred; (4) specific descriptions of the violations,  
15 including (a) the routes of exposure to acrylamide from the Products, and (b) the specific type of  
16 Products sold and used in violation of Proposition 65; and (5) the name of the specific  
17 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

18           32. CEH also sent a Certificate of Merit for each Notice to the California  
19 Attorney General, to the District Attorneys of every county in California, to the City Attorneys of  
20 every California city with a population greater than 750,000, and to each of the named  
21 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each  
22 Certificate certified that CEH’s counsel: (1) has consulted with one or more persons with  
23 relevant and appropriate experience or expertise who reviewed facts, studies, or other data  
24 regarding the exposures to acrylamide alleged in each Notice; and (2) based on the information  
25 obtained through such consultations, believes that there is a reasonable and meritorious case for a  
26 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health  
27 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney  
28 General included factual information – provided on a confidential basis – sufficient to establish



1 the basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel  
2 and the facts, studies, or other data reviewed by such persons.

3 33. None of the public prosecutors with the authority to prosecute violations  
4 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
5 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each  
6 of CEH’s Notices.

7 34. Defendants both know and intend that individuals, including children, will  
8 consume the Products, thus exposing them to acrylamide.

9 35. Under Proposition 65, an exposure is “knowing” where the party  
10 responsible for such exposure has:

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

14 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
16 § 12601).

17 36. As companies that manufacture, import, distribute, and/or sell the Products  
18 for use in the California marketplace, Defendants know or should know that the Products contain  
19 acrylamide and that individuals who consume the Products will be exposed to acrylamide. The  
20 acrylamide exposures to consumers who consume the Products are a natural and foreseeable  
21 consequence of Defendants’ placing the Products into the stream of commerce.

22 37. Defendants have been informed of the acrylamide in their Products by the  
23 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

24 38. Defendants also have constructive knowledge that their Products contain  
25 acrylamide due to the widespread media coverage concerning the problem of acrylamide in food  
26 products in general.

27 39. Nevertheless, Defendants continue to expose consumers, including  
28 children, to acrylamide without prior clear and reasonable warnings regarding the carcinogenic  
hazards of acrylamide.

1                   40.    CEH has engaged in good-faith efforts to resolve the claims alleged herein  
2 prior to filing this Complaint.

3                   41.    Any person “violating or threatening to violate” Proposition 65 may be  
4 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to  
5 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
6 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil  
7 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

8   **FIRST CAUSE OF ACTION**  
9   **(Violations of Health & Safety Code § 25249.6)**  
10   **(Against Potato or Sweet Potato Snack Products Defendants)**

11                   42.    CEH realleges and incorporates by reference as if specifically set forth  
12 herein Paragraphs 1 through 41, inclusive.

13                   43.    By placing the Potato or Sweet Potato Snack Products into the stream of  
14 commerce, Potato or Sweet Potato Snack Products Defendants are each a person in the course of  
15 doing business within the meaning of Health & Safety Code § 25249.11.

16                   44.    Acrylamide is a chemical listed by the State of California as known to  
17 cause cancer.

18                   45.    Each Potato or Sweet Potato Snack Products Defendant knows that  
19 average use of the Potato or Sweet Potato Snack Products will expose users of its Potato or  
20 Sweet Potato Snack Products to acrylamide. Each Potato or Sweet Potato Snack Products  
21 Defendant intends that its Potato or Sweet Potato Snack Products be used in a manner that results  
22 in exposures to acrylamide from the Potato or Sweet Potato Snack Products.

23                   46.    Potato or Sweet Potato Snack Products Defendants have failed, and  
24 continue to fail, to provide clear and reasonable warnings regarding the carcinogenicity of  
25 acrylamide to users of the Potato or Sweet Potato Snack Products.

26                   47.    By committing the acts alleged above, Potato or Sweet Potato Snack  
27 Products Defendants have at all times relevant to this Complaint violated Proposition 65 by  
28 knowingly and intentionally exposing individuals to acrylamide without first giving clear and  
reasonable warnings to such individuals regarding the carcinogenicity of acrylamide.

1                   Wherefore, CEH prays for judgment against Potato or Sweet Potato Snack  
2 Products Defendants, as set forth hereafter.

3   **SECOND CAUSE OF ACTION**  
4   **(Violations of Health & Safety Code § 25249.6)**  
5   **(Against Vegetable Chip Products Defendants)**

6                   48.     CEH realleges and incorporates by reference as if specifically set forth  
7 herein Paragraphs 1 through 47, inclusive.

8                   49.     By placing the Vegetable Chip Products into the stream of commerce,  
9 Vegetable Chip Products Defendants are each a person in the course of doing business within the  
10 meaning of Health & Safety Code § 25249.11.

11                  50.     Acrylamide is a chemical listed by the State of California as known to  
12 cause cancer.

13                  51.     Each Vegetable Chip Products Defendant knows that average use of the  
14 Vegetable Chip Products will expose users of its Vegetable Chip Products to acrylamide. Each  
15 Vegetable Chip Products Defendant intends that its Vegetable Chip Products be used in a manner  
16 that results in exposures to acrylamide from the Vegetable Chip Products.

17                  52.     Vegetable Chip Products Defendants have failed, and continue to fail, to  
18 provide clear and reasonable warnings regarding the carcinogenicity of acrylamide to users of the  
19 Vegetable Chip Products.

20                  53.     By committing the acts alleged above, Vegetable Chip Products  
21 Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and  
22 intentionally exposing individuals to acrylamide without first giving clear and reasonable  
23 warnings to such individuals regarding the carcinogenicity of acrylamide.

24                  Wherefore, CEH prays for judgment against Vegetable Chip Products Defendants,  
25 as set forth hereafter.

26   **PRAYER FOR RELIEF**

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

28                  1.     That the Court, pursuant to Health & Safety Code § 25249.7(a),  
preliminarily and permanently enjoin Defendants from offering Products for sale in

1 California without providing prior clear and reasonable warnings, as CEH shall specify in further  
2 application to the Court;

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

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

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

11           5. That the Court grant such other and further relief as may be just and  
12 proper.

13  
14 Dated: March 2, 2017

Respectfully submitted,

15 LEXINGTON LAW GROUP

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19 Howard Hirsch  
20 Attorneys for Plaintiff  
21 CENTER FOR ENVIRONMENTAL HEALTH  
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