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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.

GOYA FOODS, INC.; GOYA FOODS OF CALIFORNIA, INC.; 99 CENTS ONLY STORES LLC; CALBEE NORTH AMERICA, LLC; DAISO CALIFORNIA LLC; FOODSERVICEDIRECT INC.; GREEN SEED GROUP LLC; JET.COM, INC.; THE KROGER CO.; KSF ACQUISITION CORP.; OLD LYME GOURMET COMPANY; PAPER HOUSE, INC.; SF MARKETS, LLC; TYRRELLS POTATO CRISPS LIMITED; TYRRELLS INC.; VITACOST.COM, INC.; and DOES 1 through 300, inclusive,
Defendants.

FILED BY FAX
ALAMEDA COUNTY

August 03, 2017

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:
RG17870238

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 State
7 of California to cause cancer. Such exposures have occurred, and continue to occur, through the
8 manufacture, distribution, sale, and consumption of two types of food products: (i) fried or baked
9 potato or sweet potato based snack foods (the "Potato or Sweet Potato Snack Products"); and (ii)
10 fried or baked vegetable chips (the "Vegetable Chip Products"). Potato or Sweet Potato Snack
11 Products and Vegetable Chip Products are collectively referred to herein as "Products."
12 Consumers, including children, are exposed to acrylamide when they consume the Products.

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

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

24 **PARTIES**

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

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

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

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

16 7. Defendant 99 CENTS ONLY STORES LLC is a person in the course of doing
17 business within the meaning of Health & Safety Code § 25249.11. Defendant 99 CENTS ONLY
18 STORES LLC manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for
19 sale and consumption in California. CEH's allegations and claims against Defendant 99 CENTS
20 ONLY STORES LLC in this action are limited to Potato or Sweet Potato Snack Products sold by
21 Defendant KSF ACQUISITION CORP.

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

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

1 consumption in California. CEH's allegations and claims against Defendant DAISO
2 CALIFORNIA LLC in this action are limited to Potato or Sweet Potato Snack Products sold by
3 Koikeya Co., Ltd. and Defendant CALBEE NORTH AMERICA, LLC.

4 10. Defendant FOODSERVICEDIRECT INC. is a person in the course of doing
5 business within the meaning of Health & Safety Code § 25249.11. Defendant
6 FOODSERVICEDIRECT INC. manufactures, distributes, and/or sells Potato or Sweet Potato
7 Snack Products for sale and consumption in California. CEH's allegations and claims against
8 Defendant FOODSERVICEDIRECT INC. in this action are limited to Potato or Sweet Potato
9 Snack Products sold by Defendants GOYA FOODS, INC. and GOYA FOODS OF
10 CALIFORNIA, INC.

11 11. Defendant GREEN SEED GROUP LLC is a person in the course of doing
12 business within the meaning of Health & Safety Code § 25249.11. Defendant GREEN SEED
13 GROUP LLC manufactures, distributes, and/or sells Vegetable Chip Products for sale and
14 consumption in California. CEH's allegations and claims against Defendant GREEN SEED
15 GROUP LLC in this action are limited to Vegetable Chip Products sold by Defendants
16 TYRRELLS POTATO CRISPS LIMITED and TYRRELLS INC.

17 12. Defendant JET.COM, INC. is a person in the course of doing business within the
18 meaning of Health & Safety Code § 25249.11. Defendant JET.COM, INC. manufactures,
19 distributes, and/or sells Potato or Sweet Potato Snack Products and Vegetable Chip Products for
20 sale and consumption in California. CEH's allegations and claims against Defendant JET.COM,
21 INC. in this action are limited to Potato or Sweet Potato Snack Products sold by Liwayway
22 Marketing Corp. and to Vegetable Chip Products sold by Defendants TYRRELLS POTATO
23 CRISPS LIMITED and TYRRELLS INC.

24 13. Defendant THE KROGER CO. is a person in the course of doing business within
25 the meaning of Health & Safety Code § 25249.11. Defendant THE KROGER CO. manufactures,
26 distributes, and/or sells Potato or Sweet Potato Snack Products for sale and consumption in
27 California. CEH's allegations and claims against Defendant THE KROGER CO. in this action
28

1 are limited to Potato or Sweet Potato Snack Products sold by Defendants TYRRELLS POTATO
2 CRISPS LIMITED and TYRRELLS INC.

3 14. Defendant KSF ACQUISITION CORP. is a person in the course of doing business
4 within the meaning of Health & Safety Code § 25249.11. Defendant KSF ACQUISITION
5 CORP. manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for sale and
6 consumption in California.

7 15. Defendant OLD LYME GOURMET COMPANY is a person in the course of
8 doing business within the meaning of Health & Safety Code § 25249.11. Defendant OLD LYME
9 GOURMET COMPANY manufactures, distributes, and/or sells Potato or Sweet Potato Snack
10 Products for sale and consumption in California.

11 16. Defendant PAPER HOUSE, INC. is a person in the course of doing business
12 within the meaning of Health & Safety Code § 25249.11. Defendant PAPER HOUSE, INC.
13 manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for sale and
14 consumption in California. CEH's allegations and claims against Defendant PAPER HOUSE,
15 INC. in this action are limited to Potato or Sweet Potato Snack Products sold by Defendants
16 GOYA FOODS, INC. and GOYA FOODS OF CALIFORNIA, INC.

17 17. Defendant SF MARKETS, LLC is a person in the course of doing business within
18 the meaning of Health & Safety Code § 25249.11. Defendant SF MARKETS, LLC
19 manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for sale and
20 consumption in California. CEH's allegations and claims against Defendant SF MARKETS,
21 LLC in this action are limited to Potato or Sweet Potato Snack Products sold by Defendant OLD
22 LYME GOURMET COMPANY.

23 18. Defendant TYRRELLS POTATO CRISPS LIMITED is a person in the course of
24 doing business within the meaning of Health & Safety Code § 25249.11. Defendant TYRRELLS
25 POTATO CRISPS LIMITED manufactures, distributes, and/or sells Potato or Sweet Potato
26 Snack Products and Vegetable Chip Products for sale and consumption in California.

27 19. Defendant TYRRELLS INC. is a person in the course of doing business within the
28 meaning of Health & Safety Code § 25249.11. Defendant TYRRELLS INC. manufactures,

1 distributes, and/or sells Potato or Sweet Potato Snack Products and Vegetable Chip Products for
2 sale and consumption in California.

3 20. Defendant VITACOST.COM, INC. is a person in the course of doing business
4 within the meaning of Health & Safety Code § 25249.11. Defendant VITACOST.COM, INC.
5 manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for sale and
6 consumption in California. CEH’s allegations and claims against Defendant VITACOST.COM,
7 INC. in this action are limited to Potato or Sweet Potato Snack Products sold by Defendants
8 TYRRELLS POTATO CRISPS LIMITED and TYRRELLS INC.

9 21. DOES 1 through 100 are each a person in the course of doing business within the
10 meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture, distribute,
11 and/or sell Potato or Sweet Potato Snack Products for sale and consumption in California.
12 Defendants GOYA FOODS, INC.; GOYA FOODS OF CALIFORNIA, INC.; 99 CENTS ONLY
13 STORES LLC; CALBEE NORTH AMERICA, LLC; DAISO CALIFORNIA LLC;
14 FOODSERVICEDIRECT INC.; THE KROGER CO.; KSF ACQUISITION CORP.; OLD LYME
15 GOURMET COMPANY; PAPER HOUSE, INC.; SF MARKETS, LLC; VITACOST.COM,
16 bINC.; JET.COM, INC.; TYRRELLS POTATO CRISPS LIMITED; TYRRELLS INC.; and
17 DOES 1 through 100 are collectively referred to herein as “Potato or Sweet Potato Snack
18 Products Defendants.”

19 22. DOES 101 through 200 are each a person in the course of doing business within
20 the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,
21 distribute, and/or sell Vegetable Chip Products for sale and consumption in California.
22 Defendants GREEN SEED GROUP LLC; JET.COM, INC.; TYRRELLS POTATO CRISPS
23 LIMITED; TYRRELLS INC.; and DOES 101 through 200 are collectively referred to herein as
24 “Vegetable Chip Products Defendants.”

25 23. DOES 201 through 300 are each a person in the course of doing business within
26 the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,
27 distribute, and/or sell both Potato or Sweet Potato Snack Products and Vegetable Chip Products
28 for sale and consumption in California.

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

5 31. On January 1, 1990, the State of California officially listed acrylamide as a
6 chemical known to cause cancer. On January 1, 1991, one year after it was listed as a chemical
7 known to cause cancer, acrylamide became subject to the clear and reasonable warning
8 requirement regarding carcinogens under Proposition 65. 27 California Code of Regulations
9 (“C.C.R.”) § 27001(b); Health & Safety Code § 25249.10(b). Acrylamide’s listing as a known
10 carcinogen is well supported by numerous scientific studies establishing a link between
11 acrylamide exposure and cancer. *See generally* Beland, F., *et al.*, “Carcinogenicity of acrylamide
12 in B6C3F1 mice and F344/N rats from a 2-year drinking water exposure,” *Food & Chemical*
13 *Toxicology* (2013) Vol 51:149; World Health Organization International Agency for Research
14 on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans* (1994) Vol.
15 60:389; Vogt, R., *et al.*, “Cancer and non-cancer health effects from food contaminant exposures
16 for children and adults in California: a risk assessment,” *Environmental Health* (2012) Vol.
17 11:83.

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

1 in Food: Total Diet Study Results,” publicly available online at [http://www.fda.gov/Food/
2 FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm) (updated October 2006).

3 33. Defendants’ Products contain sufficient quantities of acrylamide such that
4 consumers, including children, who consume the Products are exposed to acrylamide. The route
5 of exposure for the violations is direct ingestion when consumers eat the Products. These
6 exposures occur in homes, schools, workplaces, and everywhere else throughout California where
7 the products are consumed.

8 34. No clear and reasonable warning is provided with the Products regarding the
9 carcinogenic hazards of acrylamide.

10 35. Any person acting in the public interest has standing to enforce violations of
11 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
12 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
13 within such time. Health & Safety Code § 25249.7(d).

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

24 37. CEH also sent a Certificate of Merit for each Notice to the California Attorney
25 General, to the District Attorneys of every county in California, to the City Attorneys of every
26 California city with a population greater than 750,000, and to each of the named Defendants. In
27 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate
28 certified that CEH’s counsel: (1) has consulted with one or more persons with relevant and

1 appropriate experience or expertise who reviewed facts, studies, or other data regarding the
2 exposures to acrylamide alleged in each Notice; and (2) based on the information obtained
3 through such consultations, believes that there is a reasonable and meritorious case for a citizen
4 enforcement action based on the facts alleged in each Notice. In compliance with Health &
5 Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General
6 included factual information – provided on a confidential basis – sufficient to establish the basis
7 for the Certificate, including the identity of the person(s) consulted by CEH’s counsel and the
8 facts, studies, or other data reviewed by such persons.

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

13 39. Defendants both know and intend that individuals, including children, will
14 consume the Products, thus exposing them to acrylamide.

15 40. Under Proposition 65, an exposure is “knowing” where the party responsible for
16 such exposure has:

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

19 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
20 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
21 § 12601).

22 41. As companies that manufacture, import, distribute, and/or sell the Products for use
23 in the California marketplace, Defendants know or should know that the Products contain
24 acrylamide and that individuals who consume the Products will be exposed to acrylamide. The
25 acrylamide exposures to consumers who consume the Products are a natural and foreseeable
26 consequence of Defendants’ placing the Products into the stream of commerce.

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

1 51. Potato or Sweet Potato Snack Products Defendants have failed, and continue to
2 fail, to provide clear and reasonable warnings regarding the carcinogenicity of acrylamide to
3 users of the Potato or Sweet Potato Snack Products.

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

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

10 **SECOND CAUSE OF ACTION**
11 **(Violations of Health & Safety Code § 25249.6)**
12 **(Against Vegetable Chip Products Defendants)**

13 53. CEH realleges and incorporates by reference as if specifically set forth herein
14 Paragraphs 1 through 52, inclusive.

15 54. By placing the Vegetable Chip Products into the stream of commerce, Vegetable
16 Chip Products Defendants are each a person in the course of doing business within the meaning
17 of Health & Safety Code § 25249.11.

18 55. Acrylamide is a chemical listed by the State of California as known to cause
19 cancer.

20 56. Each Vegetable Chip Products Defendant knows that average use of the Vegetable
21 Chip Products will expose users of its Vegetable Chip Products to acrylamide. Each Vegetable
22 Chip Products Defendant intends that its Vegetable Chip Products be used in a manner that results
23 in exposures to acrylamide from the Vegetable Chip Products.

24 57. Vegetable Chip Products Defendants have failed, and continue to fail, to provide
25 clear and reasonable warnings regarding the carcinogenicity of acrylamide to users of the
26 Vegetable Chip Products.

27 58. By committing the acts alleged above, Vegetable Chip Products Defendants have
28 at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally

1 exposing individuals to acrylamide without first giving clear and reasonable warnings to such
2 individuals regarding the carcinogenicity of acrylamide.

3 Wherefore, CEH prays for judgment against Potato or Sweet Potato Snack
4 Products and Vegetable Chip Products Defendants, as set forth hereafter.

5 **PRAYER FOR RELIEF**

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

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

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

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

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

18 5. That the Court grant such other and further relief as may be just and proper.
19

20 Dated: August 2, 2017

Respectfully submitted,

21 LEXINGTON LAW GROUP
22

23 
24 _____
25 Joseph Mann
26 Attorneys for Plaintiff
27 CENTER FOR ENVIRONMENTAL HEALTH
28