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CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JUN 08 2017**

**CLERK OF THE SUPERIOR COURT**  
By STEFANIE JONROWE  
Deputy

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

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

14 Plaintiff, )

15 v. )

16 BELL-CARTER FOODS, INC.; AMERIFOODS )  
17 TRADING COMPANY LLC; MUSCO OLIVE )  
18 PRODUCTS, INC.; RENWOOD ANDRONICO )  
19 LENDING 1, LLC; SAFEWAY INC.; SMART )  
& FINAL STORES, INC.; SMART & FINAL )  
20 LLC; TARGET CORPORATION ; and DOES 1 )  
through 200, inclusive, )

21 Defendants. )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No. RG17863369

**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’ California-style  
9 black ripe olives (the “Products”). Consumers are exposed to acrylamide when they consume the  
10 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 without providing clear and reasonable warnings  
14 to individuals prior to their exposure. Defendants introduce Products that contain significant  
15 quantities of acrylamide into the California marketplace, thereby exposing consumers of their  
16 Products to acrylamide.

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

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a  
23 non-profit corporation dedicated to protecting the public from environmental health hazards and  
24 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the  
25 State of California. CEH is a “person” within the meaning of Health & Safety Code  
26 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &  
27 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy  
28 group that has prosecuted a large number of Proposition 65 cases in the public interest. These

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

5           5. Defendant BELL-CARTER FOODS, INC. is a person in the course of  
6 doing business within the meaning of Health & Safety Code § 25249.11. Defendant BELL-  
7 CARTER FOODS, INC. manufactures, distributes, and/or sells the Products for sale and  
8 consumption in California.

9           6. Defendant AMERIFOODS TRADING COMPANY LLC is a person in the  
10 course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
11 AMERIFOODS TRADING COMPANY LLC manufactures, distributes, and/or sells the  
12 Products for sale and consumption in California. CEH's claims against Defendant  
13 AMERIFOODS TRADING COMPANY LLC in this action are limited to Products sold under  
14 the "First Street" brand.

15           7. Defendant MUSCO OLIVE PRODUCTS, INC. is a person in the course  
16 of doing business within the meaning of Health & Safety Code § 25249.11. Defendant MUSCO  
17 OLIVE PRODUCTS, INC. manufactures, distributes, and/or sells the Products for sale and  
18 consumption in California.

19           8. Defendant RENWOOD ANDRONICO LENDING 1, LLC is a person in  
20 the course of doing business within the meaning of Health & Safety Code § 25249.11.  
21 Defendant RENWOOD ANDRONICO LENDING 1, LLC manufactures, distributes, and/or sells  
22 the Products for sale and consumption in California. CEH's claims against Defendant  
23 RENWOOD ANDRONICO LENDING 1, LLC in this action are limited to Products sold by  
24 Defendant BELL-CARTER FOODS, INC.

25           9. Defendant SAFEWAY, INC. is a person in the course of doing business  
26 within the meaning of Health & Safety Code § 25249.11. Defendant SAFEWAY, INC.  
27 manufactures, distributes, and/or sells the Products for sale and consumption in California.  
28 CEH's claims against Defendant SAFEWAY, INC. in this action are limited to Products sold by

1 Defendant BELL-CARTER FOODS, INC., and to Products sold under the “Signature Kitchen”  
2 brand.

3 10. Defendant SMART & FINAL STORES, INC. is a person in the course of  
4 doing business within the meaning of Health & Safety Code § 25249.11. Defendant SMART &  
5 FINAL STORES, INC. manufactures, distributes, and/or sells the Products for sale and  
6 consumption in California. CEH’s claims against Defendant SMART & FINAL STORES, INC.  
7 in this action are limited to Products sold under the “First Street” brand.

8 11. Defendant SMART & FINAL STORES LLC is a person in the course of  
9 doing business within the meaning of Health & Safety Code § 25249.11. Defendant SMART &  
10 FINAL STORES LLC manufactures, distributes, and/or sells the Products for sale and  
11 consumption in California. CEH’s claims against Defendant SMART & FINAL STORES LLC  
12 in this action are limited to Products sold under the “First Street” brand.

13 12. Defendant TARGET CORPORATION is a person in the course of doing  
14 business within the meaning of Health & Safety Code § 25249.11. Defendant TARGET  
15 CORPORATION manufactures, distributes, and/or sells the Products for sale and consumption  
16 in California. CEH’s claims against Defendant TARGET CORPORATION in this action are  
17 limited to Products sold by Defendant MUSCO OLIVE PRODUCTS, INC.

18 13. 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 and consumption in California.

21 14. The true names of DOES 1 through 200 are either unknown to CEH at this  
22 time or the applicable time period before which CEH may file a Proposition 65 action has not  
23 run. When their identities are ascertained or the applicable time period before which CEH may  
24 file a Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

25 15. The defendants identified in paragraphs 5 through 12 and DOES 1 through  
26 200 are collectively referred to herein as “Defendants.”

27 **JURISDICTION AND VENUE**

28 16. The Court has jurisdiction over this action pursuant to Health & Safety

1 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
2 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
3 to other trial courts.

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

10 18. Venue is proper in Alameda County Superior Court because one or more of  
11 the violations arise in the County of Alameda.

#### 12 **BACKGROUND FACTS**

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

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

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

25 21. On January 1, 1990, the State of California officially listed acrylamide as a  
26 chemical known to cause cancer. On January 1, 1991, one year after it was listed as a chemical  
27 known to cause cancer, acrylamide became subject to the clear and reasonable warning  
28 requirement regarding carcinogens under Proposition 65. 27 California Code of Regulations  
29 (“C.C.R.”) § 27001(b); Health & Safety Code § 25249.10(b). Acrylamide’s listing as a known

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

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

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

27           24. No clear and reasonable warning is provided with the Products regarding  
28 the carcinogenic hazards of acrylamide.

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

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

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

28           28. None of the public prosecutors with the authority to prosecute violations

1 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
2 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each  
3 of CEH's Notices.

4           29. Defendants both know and intend that individuals will consume the  
5 Products, thus exposing them to acrylamide.

6           30. Under Proposition 65, an exposure is "knowing" where the party  
7 responsible for such exposure has:

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

11 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
12 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
13 § 12601).

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

19           32. Defendants have been informed of the acrylamide in their Products by the  
20 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

21           33. Defendants also have constructive knowledge that their Products contain  
22 acrylamide due to: (1) the widespread media coverage concerning the problem of acrylamide in  
23 food products in general; and (2) reports by government agencies such as the United States Food  
24 and Drug Administration ("FDA") indicating high levels of acrylamide in the Products. For  
25 instance, testing by FDA in the early 2000s found acrylamide levels as high as 1363 parts per  
26 billion in products sold by Defendant Safeway, Inc. *See, e.g.*, FDA, "Survey Data on Acrylamide  
27 in Food: Individual Food Products," publicly available online at [https://www.fda.gov/Food/  
28 FoodbornellnessContaminants/ChemicalContaminants/ucm053549.htm](https://www.fda.gov/Food/FoodbornellnessContaminants/ChemicalContaminants/ucm053549.htm) (updated July 2006).

34. Nevertheless, Defendants continue to expose consumers to acrylamide



1 without prior clear and reasonable warnings regarding the carcinogenic hazards of acrylamide.

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

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

9 **FIRST CAUSE OF ACTION**

10 **(Violations of Health & Safety Code § 25249.6)**

11 37. CEH realleges and incorporates by reference as if specifically set forth  
12 herein Paragraphs 1 through 36 , inclusive.

13 38. By placing the Products into the stream of commerce, each Defendant is a  
14 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

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

17 40. Each Defendant knows that average use of the Products will expose users  
18 of its Products to acrylamide. Each Defendant intends that its Products be consumed in a manner  
19 that results in exposures to acrylamide from the Products.

20 41. Defendants have failed, and continue to fail, to provide clear and  
21 reasonable warnings regarding the carcinogenicity of acrylamide to consumers of the Products.

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

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

27 **PRAYER FOR RELIEF**

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

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

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

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

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

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

15  
16 Dated: June 8, 2017

Respectfully submitted,

LEXINGTON LAW GROUP

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21 \_\_\_\_\_  
22 Howard Hirsch  
23 Attorneys for Plaintiff  
24 CENTER FOR ENVIRONMENTAL HEALTH  
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