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8 CENTER FOR ENVIRONMENTAL HEALTH

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

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13  
14 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 17-870238  
15 )  
Plaintiff, )  
16 )  
v. ) **FIRST AMENDED COMPLAINT**  
17 ) **FOR INJUNCTIVE RELIEF AND**  
GOYA FOODS, INC.; GOYA FOODS OF ) **CIVIL PENALTIES**  
18 )  
CALIFORNIA, INC.; 99 CENTS ONLY ) Health & Safety Code § 25249.6, *et seq.*  
19 )  
STORES LLC; CALBEE NORTH AMERICA, ) (Other)  
20 )  
LLC; DAISO CALIFORNIA LLC; )  
FOODSERVICEDIRECT INC.; JET.COM, )  
21 )  
INC.; THE KROGER CO.; KSF ACQUISITION )  
CORP.; OLD LYME GOURMET COMPANY; )  
22 )  
PAPER HOUSE, INC.; SF MARKETS, LLC; )  
TYRRELLS POTATO CRISPS LIMITED; )  
23 )  
TYRRELLS INC.; VITACOST.COM, INC.; )  
BOULDER BRANDS USA, INC.; WHOLE )  
24 )  
FOODS MARKET CALIFORNIA, INC.; MRS. )  
GOOCH'S NATURAL FOOD MARKETS, )  
25 )  
INC.; NONGSHIM AMERICA, INC.; )  
GALLERIA MARKET, LP; GALLERIA )  
26 )  
MARKET/NORTHRIDGE, LP and DOES 1 )  
through 300, inclusive, )  
27 )  
Defendants. )  
28 )

FILED  
ALAMEDA COUNTY  
AUG 17 2017  
SUPERIOR COURT  
ALAMEDA COUNTY

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

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

24 13. Defendant KSF ACQUISITION CORP. is a person in the course of doing business  
25 within the meaning of Health & Safety Code § 25249.11. Defendant KSF ACQUISITION  
26 CORP. manufactures, distributes, and/or sells Potato or Sweet Potato Snack Products for sale and  
27 consumption in California.

28

1           14. Defendant OLD LYME GOURMET COMPANY is a person in the course of  
2 doing business within the meaning of Health & Safety Code § 25249.11. Defendant OLD LYME  
3 GOURMET COMPANY manufactures, distributes, and/or sells Potato or Sweet Potato Snack  
4 Products for sale and consumption in California.

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

11           16. Defendant SF MARKETS, LLC is a person in the course of doing business within  
12 the meaning of Health & Safety Code § 25249.11. Defendant SF MARKETS, LLC  
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 SF MARKETS,  
15 LLC in this action are limited to Potato or Sweet Potato Snack Products sold by Defendant OLD  
16 LYME GOURMET COMPANY.

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

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

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

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

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

7 21. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. is a person in the  
8 course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
9 WHOLE FOODS MARKET CALIFORNIA, INC. manufactures, distributes, and/or sells Potato  
10 or Sweet Potato Snack Products for sale and consumption in California. CEH's allegations and  
11 claims against Defendant WHOLE FOODS MARKET CALIFORNIA, INC. in this action are  
12 limited to Potato or Sweet Potato Snack Products sold by Defendant BOULDER BRANDS USA,  
13 INC.

14 22. Defendant MRS. GOOCH'S NATURAL FOOD MARKETS, INC. is a person in  
15 the course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
16 MRS. GOOCH'S NATURAL FOOD MARKETS, INC. manufactures, distributes, and/or sells  
17 Potato or Sweet Potato Snack Products for sale and consumption in California. CEH's allegations  
18 and claims against Defendant MRS. GOOCH'S NATURAL FOOD MARKETS, INC. in this  
19 action are limited to Potato or Sweet Potato Snack Products sold by Defendant BOULDER  
20 BRANDS USA, INC.

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

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

1 MARKET, LP in this action are limited to Potato or Sweet Potato Snack Products sold by  
2 Defendant NONGSHIM AMERICA, INC.

3 25. Defendant GALLERIA MARKET/NORTHRIDGE, LP is a person in the course of  
4 doing business within the meaning of Health & Safety Code § 25249.11. Defendant GALLERIA  
5 MARKET/NORTHRIDGE, LP manufactures, distributes, and/or sells Potato or Sweet Potato  
6 Snack Products for sale and consumption in California. CEH's allegations and claims against  
7 Defendant GALLERIA MARKET/NORTHRIDGE, LP in this action are limited to Potato or  
8 Sweet Potato Snack Products sold by Defendant NONGSHIM AMERICA, INC.

9 26. 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.;  
17 BOULDER BRANDS USA, INC.; WHOLE FOODS MARKET CALIFORNIA, INC.; MRS.  
18 GOOCH'S NATURAL FOOD MARKETS, INC.; NONGSHIM AMERICA, INC.; GALLERIA  
19 MARKET, LP; GALLERIA MARKET/NORTHRIDGE, LP; and DOES 1 through 100 are  
20 collectively referred to herein as "Potato or Sweet Potato Snack Products Defendants."

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

27 28. DOES 201 through 300 are each a person in the course of doing business within  
28 the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,

1 distribute, and/or sell both Potato or Sweet Potato Snack Products and Vegetable Chip Products  
2 for sale and consumption in California.

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

7 30. The defendants identified in paragraphs 5 through 25 and DOES 1 through 300 are  
8 collectively referred to herein as “Defendants.”

### 9 **JURISDICTION AND VENUE**

10 31. The Court has jurisdiction over this action pursuant to Health & Safety Code §  
11 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to  
12 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
13 other trial courts.

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

20 33. Venue is proper in Alameda County Superior Court because one or more of the  
21 violations arise in the County of Alameda.

### 22 **BACKGROUND FACTS**

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

26 35. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals  
27 listed by the State of California as known to cause cancer, birth defects, or other reproductive  
28 harm above certain levels without a “clear and reasonable warning” unless the business



1 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety  
2 Code § 25249.6 states, in pertinent part:

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

6 36. On January 1, 1990, the State of California officially listed acrylamide as a  
7 chemical known to cause cancer. On January 1, 1991, one year after it was listed as a chemical  
8 known to cause cancer, acrylamide became subject to the clear and reasonable warning  
9 requirement regarding carcinogens under Proposition 65. 27 California Code of Regulations  
10 (“C.C.R.”) § 27001(b); Health & Safety Code § 25249.10(b). Acrylamide’s listing as a known  
11 carcinogen is well supported by numerous scientific studies establishing a link between  
12 acrylamide exposure and cancer. *See generally* Beland, F., *et al.*, “Carcinogenicity of acrylamide  
13 in B6C3F1 mice and F344/N rats from a 2-year drinking water exposure,” *Food & Chemical*  
14 *Toxicology* (2013) Vol 51:149; World Health Organization International Agency for Research  
15 on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans* (1994) Vol.  
16 60:389; Vogt, R., *et al.*, “Cancer and non-cancer health effects from food contaminant exposures  
17 for children and adults in California: a risk assessment,” *Environmental Health* (2012) Vol.  
18 11:83.

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

1 ChemicalContaminants/ucm053549.htm (updated July 2006); FDA, "Survey Data on Acrylamide  
2 in Food: Total Diet Study Results," publicly available online at [http://www.fda.gov/Food/  
3 FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm) (updated October 2006).

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

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

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

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

25 42. CEH also sent a Certificate of Merit for each Notice to the California Attorney  
26 General, to the District Attorneys of every county in California, to the City Attorneys of every  
27 California city with a population greater than 750,000, and to each of the named Defendants. In  
28 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate

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

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

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

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

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

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

23 46. As companies that manufacture, import, distribute, and/or sell the Products for use  
24 in the California marketplace, Defendants know or should know that the Products contain  
25 acrylamide and that individuals who consume the Products will be exposed to acrylamide. The  
26 acrylamide exposures to consumers who consume the Products are a natural and foreseeable  
27 consequence of Defendants' placing the Products into the stream of commerce.  
28

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

3 48. Defendants also have constructive knowledge that their Products contain  
4 acrylamide due to the widespread media coverage concerning the problem of acrylamide in food  
5 products in general.

6 49. Nevertheless, Defendants continue to expose consumers, including children, to  
7 acrylamide without prior clear and reasonable warnings regarding the carcinogenic hazards of  
8 acrylamide.

9 50. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
10 filing this Complaint.

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

16 **FIRST CAUSE OF ACTION**  
17 **(Violations of Health & Safety Code § 25249.6)**  
18 **(Against Potato or Sweet Potato Snack Products Defendants)**

19 52. CEH realleges and incorporates by reference as if specifically set forth herein  
20 Paragraphs 1 through 51, inclusive.

21 53. By placing the Potato or Sweet Potato Snack Products into the stream of  
22 commerce, Potato or Sweet Potato Snack Products Defendants are each a person in the course of  
23 doing business within the meaning of Health & Safety Code § 25249.11.

24 54. Acrylamide is a chemical listed by the State of California as known to cause  
25 cancer.

26 55. Each Potato or Sweet Potato Snack Products Defendant knows that average use of  
27 the Potato or Sweet Potato Snack Products will expose users of its Potato or Sweet Potato Snack  
28 Products to acrylamide. Each Potato or Sweet Potato Snack Products Defendant intends that its

1 Potato or Sweet Potato Snack Products be used in a manner that results in exposures to  
2 acrylamide from the Potato or Sweet Potato Snack Products.

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

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

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

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

15 58. CEH realleges and incorporates by reference as if specifically set forth herein  
16 Paragraphs 1 through 57, inclusive.

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

20 60. Acrylamide is a chemical listed by the State of California as known to cause  
21 cancer.

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

26 62. Vegetable Chip Products Defendants have failed, and continue to fail, to provide  
27 clear and reasonable warnings regarding the carcinogenicity of acrylamide to users of the  
28 Vegetable Chip Products.

