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From: Lexington Law Group

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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,)

v.)

MRS. GOOCII'S NATURAL FOOD)
MARKETS, INC; WHOLE FOODS MARKET)
CALIFORNIA, INC.; and DOES 1 through 200,)
inclusive,)

Defendants.)

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

(Other)

FILED BY FAX

ALAMEDA COUNTY

March 13, 2017

CLERK OF
THE SUPERIOR COURT
By Lynn Wiley, Deputy

CASE NUMBER:

RG17852777

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’ prune juice (the
9 “Products”). Consumers are exposed to acrylamide when they consume the Products.

10 2. Under California’s Proposition 65, Health & Safety Code § 25249.5, *et*
11 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
12 to chemicals known to the State to cause cancer without providing clear and reasonable warnings
13 to individuals prior to their exposure. Defendants introduce Products contaminated with
14 significant quantities of acrylamide into the California marketplace, thereby exposing consumers
15 of their Products to acrylamide.

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

20 **PARTIES**

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

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

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

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

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

27 19. Any person acting in the public interest has standing to enforce violations
28 of Proposition 65 provided that such person has supplied the requisite public enforcers with a

1 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
2 action within such time. Health & Safety Code § 25249.7(d).

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

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

26 22. None of the public prosecutors with the authority to prosecute violations
27 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
28 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each

1 of CEH's Notices.

2 23. Defendants both know and intend that individuals will consume the
3 Products, thus exposing them to acrylamide.

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

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

9 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
10 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
11 § 12601).

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

17 26. Defendants have been informed of the acrylamide in their Products by the
18 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

19 27. Defendants also have constructive knowledge that their Products contain
20 acrylamide due to the widespread media coverage concerning the problem of acrylamide in food
21 products in general. In addition, the state trade group for the prune industry admits that the
22 Products contain acrylamide. *See* California Dried Plum Board, "Prune Juice: Benefits Aren't
23 Just for the Elderly, *available at* [http://www.californiadriedplums.org/in-the-news/2016/8/
24 prune-juice-benefits-arent-just-for-the-elderly](http://www.californiadriedplums.org/in-the-news/2016/8/prune-juice-benefits-arent-just-for-the-elderly).

25 28. Nevertheless, Defendants continue to expose consumers to acrylamide
26 without prior clear and reasonable warnings regarding the carcinogenic hazards of acrylamide.

27 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein
28 prior to filing this Complaint.

1 application to the Court;

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

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

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

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

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13 Dated: March 13, 2017

Respectfully submitted,

14 LEXINGTON LAW GROUP

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17 _____
18 Howard Hirsch
19 Attorneys for Plaintiff
20 CENTER FOR ENVIRONMENTAL HEALTH
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