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From: Lexington Law Group

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10	SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ALAMEDA	
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13	CENTER FOR ENVIRONMENTAL HEALTH,) a non-profit corporation,	Case No
14) Plaintiff,)	COMPLAINT FOR INJUNCTIVE
15	v.)	RELIEF AND CIVIL PENALTIES
16) MRS. GOOCII'S NATURAL FOOD)	Health & Safety Code § 25249.6, et seq.
17 18	MRS. GOOCH'S NATURAL FOOD) MARKETS, INC; WHOLE FOODS MARKET) CALIFORNIA, INC.; and DOES 1 through 200,) inclusive,)	(Other)
19	Defendants,	
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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, <i>et</i>	
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	<u>PARTIES</u>	
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	
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products to remove toxic chemicals and to make them safer. CEH also provides information to
 Californians about the health risks associated with exposure to hazardous substances, where
 manufacturers and other responsible parties fail to do so.

5. Defendant MRS. GOOCH'S NATURAL FOOD MARKETS, INC. is a
 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.
 Defendant MRS. GOOCH'S NATURAL FOOD MARKETS, INC. manufactures, distributes,
 and/or sells the Products for sale and consumption in California. CEH's claims against
 Defendant MRS. GOOCH'S NATURAL FOOD MARKETS, INC. in this action are limited to
 Products sold under the 365 Everyday Value Brand.

Defendant WHOLE FOODS MARKET CALIFORNIA, INC. is a person
 in the course of doing business within the meaning of Health & Safety Code § 25249.11.
 Defendant WHOLE FOODS MARKET CALIFORNIA, INC. manufactures, distributes, and/or
 sells the Products for sale and consumption in California. CEH's claims against Defendant
 WHOLE FOODS MARKET CALIFORNIA, INC. in this action are limited to Products sold
 under the 365 Everyday Value Brand.

7. DOES 1 through 200 are each a person in the course of doing business
within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,
distribute, and/or sell the Products for sale and consumption in California.

8. The true names of DOES 1 through 200 are either unknown to CEH at this
 time or the applicable time period before which CEH may file a Proposition 65 action has not
 run. When their identities are ascertained or the applicable time period before which CEH may
 file a Proposition 65 action has run, the Complaint shall be amended to reflect their true names.
 9. The defendants identified in paragraphs 5 through 6 and DOES 1 through

24 200 are collectively referred to herein as "Defendants."

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JURISDICTION AND VENUE

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

1 to other trial courts.

2	11. This Court has jurisdiction over Defendants because each is a business	
3	entity that does sufficient business, has sufficient minimum contacts in California, or otherwise	
4	intentionally avails itself of the California market through the sale, marketing, or use of the	
5	Products in California and/or by having such other contacts with California so as to render the	
6	exercise of jurisdiction over it by the California courts consistent with traditional notions of fair	
7	play and substantial justice.	
8	12. Venue is proper in Alameda County Superior Court because one or more of	
9	the violations arise in the County of Alameda.	
10	BACKGROUND FACTS	
11	13. The People of the State of California have declared by initiative under	
12	Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth	
13	defects, or other reproductive harm." Proposition 65, § 1(b).	
14	14. To effectuate this goal, Proposition 65 prohibits exposing people to	
15	chemicals listed by the State of California as known to cause cancer, birth defects, or other	
16	reproductive harm above certain levels without a "clear and reasonable warning" unless the	
17	business responsible for the exposure can prove that it fits within a statutory exemption. Health	
18	& Safety Code § 25249.6 states, in pertinent part:	
19	No person in the course of doing business shall knowingly and	
20	intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving	
21	clear and reasonable warning to such individual	
22	15. On January 1, 1990, the State of California officially listed acrylamide as a	
23	chemical known to cause cancer. On January 1, 1991, one year after it was listed as a chemical	
24	known to cause cancer, acrylamide became subject to the clear and reasonable warning	
25	requirement regarding carcinogens under Proposition 65. 27 California Code of Regulations	
26	("C.C.R.") § 27001(b); Health & Safety Code § 25249.10(b). Acrylamide's listing as a known	
27	carcinogen is well supported by numerous scientific studies establishing a link between	
28	acrylamide exposure and cancer. See generally Beland, F., et al., "Carcinogenicity of acrylamide	
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in B6C3F1 mice and F344/N rats from a 2-year drinking water exposure," *Food & Chemical Toxicology* (2013) Vol 51:149; World Health Organization International Agency for Research
 on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans* (1994) Vol.
 60:389; Vogt, R., *et al.*, "Cancer and non-cancer health effects from food contaminant exposures
 for children and adults in California: a risk assessment," *Environmental Health* (2012) Vol.
 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 products first came to light in 2002 when researchers at the Swedish National Food Agency and 11 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/FoodbornelllnessContaminants/ChemicalContaminants/ ucm053549.htm (July 2006); FDA, "Survey Data on Acrylamide in Food: Total Diet Study 17 Results," available at http://www.fda.gov/Food/FoodborneIllnessContaminants/Chemical 18 19 Contaminants/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.

18. No clear and reasonable warning is provided with the Products regarding
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

valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
 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 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, to 4 5 the District Attorneys of every county in California, to the City Attorneys of every California city with a population greater than 750,000, and to each of the named Defendants. In compliance 6 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the 7 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 Products sold and used in violation of Proposition 65; and (5) the name of the specific 11 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 Attorney General, to the District Attorneys of every county in California, to the City Attorneys of 14 every California city with a population greater than 750,000, and to each of the named 15 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each 16 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with 17 relevant and appropriate experience or expertise who reviewed facts, studies, or other data 18 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 General included factual information – provided on a confidential basis – sufficient to establish 23 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. 22. 26 None of the public prosecutors with the authority to prosecute violations

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

of CEH's Notices. 1 2 23. Defendants both know and intend that individuals will consume the 3 Products, thus exposing them to acrylamide. 24. Under Proposition 65, an exposure is "knowing" where the party 4 5 responsible for such exposure has: knowledge of the fact that a[n] . . . exposure to a chemical listed 6 pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No 7 knowledge that the . . . exposure is unlawful is required. 8 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. See, e.g., Final 9 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, 10 § 12601). 11 25. As companies that manufacture, import, distribute, and/or sell the Products 12 for use in the California marketplace, Defendants know or should know that the Products contain 13 acrylamide and that individuals who consume the Products will be exposed to acrylamide. The 14 acrylamide exposures to consumers who consume the Products are a natural and foreseeable 15 consequence of Defendants' placing the Products into the stream of commerce. 16 26. Defendants have been informed of the acrylamide in their Products by the 17 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH. 18 27. Defendants also have constructive knowledge that their Products contain 19 acrylamide due to the widespread media coverage concerning the problem of acrylamide in food 20 products in general. In addition, the state trade group for the prune industry admits that the 21 Products contain acrylamide. See California Dried Plum Board, "Prune Juice: Benefits Aren't 22 Just for the Elderly, available at http://www.californiadriedplums.org/in-the-news/2016/8/ 23 prune-juice-benefits-arent-just-for-the-elderly. 24 28. Nevertheless, Defendants continue to expose consumers to acrylamide 25 without prior clear and reasonable warnings regarding the carcinogenic hazards of acrylamide. 26 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein 27 prior to filing this Complaint. 28

1	30. Any person "violating or threatening to violate" Proposition 65 may be		
2	enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to		
3	violate" is defined to mean "to create a condition in which there is a substantial probability that a		
4	violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil		
5	penalties not to exceed \$2,500 per day for each violation of Proposition 65.		
6	FIRST CAUSE OF ACTION		
7	(Violations of Health & Safety Code § 25249.6)		
8	31. CEH realleges and incorporates by reference as if specifically set forth		
9	herein Paragraphs 1 through 30, inclusive.		
10	32. By placing the Products into the stream of commerce, each Defendant is a		
11	person in the course of doing business within the meaning of Health & Safety Code § 25249.11.		
12	33. Acrylamide is a chemical listed by the State of California as known to		
13	cause cancer.		
14	34. Each Defendant knows that average use of the Products will expose users		
15	of its Products to acrylamide. Each Defendant intends that its Products be consumed in a manner		
16	that results in exposures to acrylamide from the Products.		
17	35. Defendants have failed, and continue to fail, to provide clear and		
18	reasonable warnings regarding the carcinogenicity of acrylamide to consumers of the Products.		
19	36. By committing the acts alleged above, Defendants have at all times		
20	relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing		
21	individuals to acrylamide without first giving clear and reasonable warnings to such individuals		
22	regarding the carcinogenicity of acrylamide.		
23	Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.		
24	PRAYER FOR RELIEF		
25	Wherefore, CEH prays for judgment against Defendants as follows:		
26	1. That the Court, pursuant to Health & Safety Code § 25249.7(a),		
27	preliminarily and permanently enjoin Defendants from offering Products for sale in		
28	California without providing prior clear and reasonable warnings, as CEH shall specify in further		
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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	Howard Hirsch	
18	Attorneys for Plaintiff CENTER FOR ENVIRONMENTAL HEALTH	
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