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From: Lexington Law Group

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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.

BARREL O'FUN SNACK FOODS CO., LLC;
D.F. STAUFFER BISCUIT CO. INC.;
DEWEY'S BAKERY, INC.; SALEM BAKING
COMPANY, INC.; GENERAL MILLS, INC.;
JET.COM, INC.; SHEARER'S FOODS, LLC;
SMART & FINAL STORES LLC;
AMERIFOODS TRADING COMPANY LLC;
TARGET CORPORATION; WAL-MART
STORES, INC.; WAL-MART.COM USA LLC;
and DOES 1 through 300, inclusive,

Defendants.

FILED BY FAX
ALAMEDA COUNTY

November 09, 2017

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:
RG17881932

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) ginger snap
9 cookies (the "Ginger Snap Products"); and (ii) the Betty Crocker Molasses Cookie Mix (the
10 "Molasses Cookie Mix Products"). Ginger Snap Products and Molasses Cookie Mix Products are
11 collectively referred to herein as "Products." Consumers, including children, are exposed to
12 acrylamide when they eat 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 sell
17 the Products into the California marketplace knowing that consumers of the Products, including
18 children, will be exposed to significant quantities of acrylamide.

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

23 **PARTIES**

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

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

7 5. Defendant BARREL O’FUN SNACK FOODS CO., LLC is a person in the course
8 of doing business within the meaning of Health & Safety Code § 25249.11. Defendant BARREL
9 O’FUN SNACK FOODS CO., LLC manufactures, distributes, and/or sells Ginger Snaps
10 Products for sale and consumption in California.

11 6. Defendant D.F. STAUFFER BISCUIT CO. INC. is a person in the course of doing
12 business within the meaning of Health & Safety Code § 25249.11. Defendant D.F. STAUFFER
13 BISCUIT CO. INC. manufactures, distributes, and/or sells Ginger Snaps Products for sale and
14 consumption in California.

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

19 8. Defendant SALEM BAKING COMPANY, INC. is a person in the course of doing
20 business within the meaning of Health & Safety Code § 25249.11. Defendant SALEM BAKING
21 COMPANY, INC. manufactures, distributes, and/or sells Ginger Snaps Products for sale and
22 consumption in California.

23 9. Defendant GENERAL MILLS, INC. is a person in the course of doing business
24 within the meaning of Health & Safety Code § 25249.11. Defendant GENERAL MILLS, INC.
25 manufactures, distributes, and/or sells Molasses Cookie Mix Products for sale and consumption in
26 California.

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

1 distributes, and/or sells Ginger Snaps Products for sale and consumption in California. CEH's
2 allegations and claims against Defendant JET.COM, INC. in this action are limited to Ginger
3 Snaps Products sold by Defendants DEWEY'S BAKERY, INC. and SALEM BAKING
4 COMPANY, INC.

5 11. Defendant SHEARER'S FOODS, LLC is a person in the course of doing business
6 within the meaning of Health & Safety Code § 25249.11. Defendant SHEARER'S FOODS, LLC
7 manufactures, distributes, and/or sells Ginger Snaps Products for sale and consumption in
8 California.

9 12. Defendant SMART & FINAL STORES LLC is a person in the course of doing
10 business within the meaning of Health & Safety Code § 25249.11. Defendant SMART & FINAL
11 STORES LLC manufactures, distributes, and/or sells Ginger Snaps Products for sale and
12 consumption in California. CEH's allegations and claims against Defendant SMART & FINAL
13 STORES LLC in this action are limited to Ginger Snaps Products sold by Defendant D.F.
14 STAUFFER BISCUIT CO. INC., and to Ginger Snaps Products sold under the "First Street"
15 brand.

16 13. Defendant AMERIFOODS TRADING COMPANY LLC is a person in the course
17 of doing business within the meaning of Health & Safety Code § 25249.11. Defendant
18 AMERIFOODS TRADING COMPANY LLC manufactures, distributes, and/or sells Ginger
19 Snaps Products for sale and consumption in California. CEH's allegations and claims against
20 Defendant AMERIFOODS TRADING COMPANY LLC in this action are limited to Ginger
21 Snaps Products sold by Defendant D.F. STAUFFER BISCUIT CO. INC., and to Ginger Snaps
22 Products sold under the "First Street" brand.

23 14. Defendant TARGET CORPORATION is a person in the course of doing business
24 within the meaning of Health & Safety Code § 25249.11. Defendant TARGET CORPORATION
25 manufactures, distributes, and/or sells Ginger Snaps Products for sale and consumption in
26 California. CEH's allegations and claims against Defendant TARGET CORPORATION in this
27 action are limited to Ginger Snaps Products sold under the "Market Pantry" brand.
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1 15. Defendant WAL-MART STORES, INC. is a person in the course of doing business
2 within the meaning of Health & Safety Code § 25249.11. Defendant WAL-MART STORES,
3 INC. manufactures, distributes, and/or sells Ginger Snaps Products for sale and consumption in
4 California. CEH's allegations and claims against Defendant WAL-MART STORES, INC. in this
5 action are limited to Ginger Snaps Products sold under the "Great Value" brand.

6 16. Defendant WAL-MART.COM USA LLC is a person in the course of doing
7 business within the meaning of Health & Safety Code § 25249.11. Defendant WAL-
8 MART.COM USA LLC manufactures, distributes, and/or sells Ginger Snaps Products and
9 Molasses Cookie Mix Products for sale and consumption in California. CEH's allegations and
10 claims against Defendant WAL-MART.COM USA LLC in this action are limited to Ginger
11 Snaps Products sold under the "Great Value" brand, and to Molasses Cookie Mix Products.

12 17. DOES 1 through 100 are each a person in the course of doing business within the
13 meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture, distribute,
14 and/or sell Ginger Snaps Products for sale and consumption in California. Defendants BARREL
15 O'FUN SNACK FOODS CO., LLC; D.F. STAUFFER BISCUIT CO. INC.; DEWEY'S
16 BAKERY, INC.; SALEM BAKING COMPANY, INC.; JET.COM, INC.; SHEARER'S FOODS,
17 LLC; SMART & FINAL STORES LLC; AMERIFOODS TRADING COMPANY LLC;
18 TARGET CORPORATION; WAL-MART STORES, INC.; WAL-MART.COM USA LLC; and
19 DOES 1 through 100 are collectively referred to herein as "Ginger Snaps Products Defendants."

20 18. DOES 101 through 200 are each a person in the course of doing business within
21 the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,
22 distribute, and/or sell Molasses Cookie Mix Products for sale and consumption in California.
23 Defendants GENERAL MILLS, INC.; WAL-MART.COM USA LLC; and DOES 101 through
24 200 are collectively referred to herein as "Molasses Cookie Mix Products Defendants."

25 19. 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 Ginger Snaps Products and Molasses Cookie Mix Products for sale
28 and consumption in California.

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

5 21. The defendants identified in paragraphs 5 through 16 and DOES 1 through 300 are
6 collectively referred to herein as “Defendants.”

7 **JURISDICTION AND VENUE**

8 22. The Court has jurisdiction over this action pursuant to Health & Safety Code §
9 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
10 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
11 other trial courts.

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

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

20 **BACKGROUND FACTS**

21 25. The People of the State of California have declared by initiative under Proposition
22 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
23 other reproductive harm.” Proposition 65, § 1(b).

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

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 27. 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 28. 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 when the
21 Products are cooked at high temperatures, either during the manufacturing process (for Ginger
22 Snap Products) or by the consumer after purchase (for Molasses Cookie Mix Products). The
23 problem of acrylamide in food products first came to light in 2002 when researchers at the
24 Swedish National Food Agency and Stockholm University reported finding acrylamide in a
25 variety of fried and baked foods. Since then, numerous government reports and academic studies
26 have confirmed the presence of high levels of acrylamide in certain foods, including the Products
27 or similar foods. *See, e.g.*, U.S. Food and Drug Administration (“FDA”), “Survey Data on
28 Acrylamide in Food: Individual Food Products,” publicly available online at [http://www.fda.gov/
Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053549.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053549.htm) (updated July

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

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

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

11 31. 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 32. 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 33. 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 34. 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 35. Defendants both know and intend that individuals will consume the Products, thus
15 exposing them to acrylamide.

16 36. 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 37. 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 eat the Products are a natural and foreseeable
27 consequence of Defendants' placing the Products into the stream of commerce.

28

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

3 39. 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, and due to published data confirming the presence of high levels of
6 acrylamide in the Products or similar foods in particular.

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

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

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

17 **FIRST CAUSE OF ACTION**
18 **(Violations of Health & Safety Code § 25249.6)**
19 **(Against Ginger Snaps Products Defendants)**

20 43. CEH realleges and incorporates by reference as if specifically set forth herein
21 Paragraphs 1 through 42, inclusive.

22 44. By placing the Ginger Snaps Products into the stream of commerce, Ginger Snaps
23 Products Defendants are each a person in the course of doing business within the meaning of
24 Health & Safety Code § 25249.11.

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

27 46. Each Ginger Snaps Products Defendant knows that average use of the Ginger
28 Snaps Products will expose users of its Ginger Snaps Products to acrylamide. Each Ginger Snaps

1 Products Defendant intends that its Ginger Snaps Products be used in a manner that results in
2 exposures to acrylamide from the Ginger Snaps Products.

3 47. Ginger Snaps Products Defendants have failed, and continue to fail, to provide
4 clear and reasonable warnings regarding the carcinogenicity of acrylamide to users of the Ginger
5 Snaps Products.

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

10 Wherefore, CEH prays for judgment against Ginger Snaps Products Defendants, as
11 set forth hereafter.

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

15 49. CEH realleges and incorporates by reference as if specifically set forth herein
16 Paragraphs 1 through 48, inclusive.

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

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

22 52. Each Molasses Cookie Mix Products Defendant knows that average use of the
23 Molasses Cookie Mix Products will expose users of its Molasses Cookie Mix Products to
24 acrylamide. Each Molasses Cookie Mix Products Defendant intends that its Molasses Cookie
25 Mix Products be used in a manner that results in exposures to acrylamide from the Molasses
26 Cookie Mix Products.
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53. Molasses Cookie Mix Products Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the carcinogenicity of acrylamide to users of the Molasses Cookie Mix Products.

54. By committing the acts alleged above, Molasses Cookie Mix Products Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to acrylamide without first giving clear and reasonable warnings to such individuals regarding the carcinogenicity of acrylamide.

Wherefore, CEH prays for judgment against Ginger Snaps Products and Molasses Cookie Mix Products Defendants, as set forth hereafter.

1 **PRAYER FOR RELIEF**

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

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

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

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


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

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

15
16 Dated: November 9, 2017

Respectfully submitted,

17 LEXINGTON LAW GROUP

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20 _____
21 Joseph Mann
22 Attorneys for Plaintiff
23 CENTER FOR ENVIRONMENTAL HEALTH
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