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From: Lexington Law Group

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LEXINGTON LAW GROUP
Howard Hirsch, State Bar No. 213209
Joseph Mann, State Bar No. 207968
Ryan B. Berghoff, State Bar No. 308812
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
hhirsch@lexlawgroup.com
jmann@lexlawgroup.com
rberghoff@lexlawgroup.com

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,

v.

IDAHOAN FOODS, LLC; DOLLAR TREE
STORES, INC.; GREENBRIER
INTERNATIONAL, INC.; GENERAL MILLS,
INC.; JET.COM, INC; LUNARDI'S
SUPERMARKET, INC.; LUNARDI FOODS;
MICHAEL FOODS, INC.; CRYSTAL FARMS
REFRIGERATED DISTRIBUTION
COMPANY; THE RIVERSIDE GROUP, LLC;
RIVERSIDE FOODS, LLC; TARGET
CORPORATION; and DOES 1 through 200,
inclusive,
Defendants.

FILED BY FAX
ALAMEDA COUNTY

November 09, 2017

CLERK OF
THE SUPERIOR COURT
By Alicia Espinoza, Deputy

CASE NUMBER:
RG17881957

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 Defendants' hash brown potato products,
9 including but not limited to hash browns, hash brown patties, tater tots, and tater puffs (the
10 "Products"). Consumers are exposed to acrylamide when they eat the Products.

11 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
12 unlawful for businesses to knowingly and intentionally expose individuals in California to
13 chemicals known to the State to cause cancer, birth defects, or other reproductive harm without
14 providing clear and reasonable warnings to individuals prior to their exposure. Defendants sell
15 the Products into the California marketplace, knowing that consumers of the Products, including
16 children, will be exposed to significant quantities of acrylamide.

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

21 **PARTIES**

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

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

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

8 6. Defendant DOLLAR TREE STORES, INC. is a person in the course of doing
9 business within the meaning of Health & Safety Code § 25249.11. Defendant DOLLAR TREE
10 STORES, INC. manufactures, distributes, and/or sells Hash Browns Products for sale and
11 consumption in California. CEH's allegations and claims against Defendant DOLLAR TREE
12 STORES, INC. in this action are limited to Products sold by Defendants THE RIVERSIDE
13 GROUP, LLC and RIVERSIDE FOODS, LLC.

14 7. Defendant GREENBRIER INTERNATIONAL, INC. is a person in the course of
15 doing business within the meaning of Health & Safety Code § 25249.11. Defendant
16 GREENBRIER INTERNATIONAL, INC. manufactures, distributes, and/or sells Products for
17 sale and consumption in California. CEH's allegations and claims against Defendant
18 GREENBRIER INTERNATIONAL, INC. in this action are limited to Products sold by
19 Defendants THE RIVERSIDE GROUP, LLC and RIVERSIDE FOODS, LLC.

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

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

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1 10. Defendant LUNARDI'S SUPERMARKET, INC. is a person in the course of
2 doing business within the meaning of Health & Safety Code § 25249.11. Defendant
3 LUNARDI'S SUPERMARKET, INC. manufactures, distributes, and/or sells Products for sale
4 and consumption in California. CEH's allegations and claims against Defendant LUNARDI'S
5 SUPERMARKET, INC. in this action are limited to Products sold by Defendants MICHAEL
6 FOODS, INC. and CRYSTAL FARMS REFRIGERATED DISTRIBUTION COMPANY.

7 11. Defendant LUNARDI FOODS is a person in the course of doing business within
8 the meaning of Health & Safety Code § 25249.11. Defendant LUNARDI FOODS manufactures,
9 distributes, and/or sells Products for sale and consumption in California. CEH's allegations and
10 claims against Defendant LUNARDI FOODS in this action are limited to Products sold by
11 Defendants MICHAEL FOODS, INC. and CRYSTAL FARMS REFRIGERATED
12 DISTRIBUTION COMPANY.

13 12. Defendant MICHAEL FOODS, INC. is a person in the course of doing business
14 within the meaning of Health & Safety Code § 25249.11. Defendant MICHAEL FOODS, INC.
15 manufactures, distributes, and/or sells Products for sale and consumption in California.

16 13. Defendant CRYSTAL FARMS REFRIGERATED DISTRIBUTION COMPANY
17 is a person in the course of doing business within the meaning of Health & Safety Code §
18 25249.11. Defendant CRYSTAL FARMS REFRIGERATED DISTRIBUTION COMPANY
19 manufactures, distributes, and/or sells Products for sale and consumption in California.

20 14. Defendant THE RIVERSIDE GROUP, LLC is a person in the course of doing
21 business within the meaning of Health & Safety Code § 25249.11. Defendant THE RIVERSIDE
22 GROUP, LLC manufactures, distributes, and/or sells Products for sale and consumption in
23 California.

24 15. Defendant RIVERSIDE FOODS, LLC is a person in the course of doing business
25 within the meaning of Health & Safety Code § 25249.11. Defendant RIVERSIDE FOODS, LLC
26 manufactures, distributes, and/or sells Products for sale and consumption in California.

27 16. Defendant TARGET CORPORATION is a person in the course of doing business
28 within the meaning of Health & Safety Code § 25249.11. Defendant TARGET CORPORATION

1 manufactures, distributes, and/or sells Products for sale and consumption in California. CEH's
2 allegations and claims against Defendant TARGET CORPORATION in this action are limited to
3 Products sold by Defendant IDAHOAN FOODS, LLC.

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

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

11 19. The defendants identified in paragraphs 5 through 16 and DOES 1 through 200 are
12 collectively referred to herein as "Defendants."

13 **JURISDICTION AND VENUE**

14 20. The Court has jurisdiction over this action pursuant to Health & Safety Code §
15 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
16 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
17 other trial courts.

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

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

1 **BACKGROUND FACTS**

2 23. The People of the State of California have declared by initiative under Proposition
3 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
4 other reproductive harm.” Proposition 65, § 1(b).

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

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

13 25. On January 1, 1990, the State of California officially listed acrylamide as a
14 chemical known to cause cancer. On January 1, 1991, one year after it was listed as a chemical
15 known to cause cancer, acrylamide became subject to the clear and reasonable warning
16 requirement regarding carcinogens under Proposition 65. 27 California Code of Regulations
17 (“C.C.R.”) § 27001(b); Health & Safety Code § 25249.10(b). Acrylamide’s listing as a known
18 carcinogen is well supported by numerous scientific studies establishing a link between
19 acrylamide exposure and cancer. *See generally* Beland, F., *et al.*, “Carcinogenicity of acrylamide
20 in B6C3F1 mice and F344/N rats from a 2-year drinking water exposure,” *Food & Chemical*
21 *Toxicology* (2013) Vol 51:149; World Health Organization International Agency for Research
22 on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans* (1994) Vol.
23 60:389; Vogt, R., *et al.*, “Cancer and non-cancer health effects from food contaminant exposures
24 for children and adults in California: a risk assessment,” *Environmental Health* (2012) Vol.
25 11:83.

26 26. Acrylamide is found in cigarette smoke and is produced industrially for use in
27 products such as plastics, grouts, water treatment products, and cosmetics. Acrylamide is also
28 found in certain food products, including the Products at issue. Acrylamide is formed when the

1 Products are cooked at high temperatures. The problem of acrylamide in food products first came
2 to light in 2002 when researchers at the Swedish National Food Agency and Stockholm
3 University reported finding acrylamide in a variety of fried and baked foods. Since then,
4 numerous government reports and academic studies have confirmed the presence of high levels of
5 acrylamide in certain foods, including the Products. *See, e.g.*, U.S. Food and Drug
6 Administration (“FDA”), “Survey Data on Acrylamide in Food: Individual Food Products,”
7 publicly available online at [http://www.fda.gov/Food/FoodborneIllnessContaminants/
8 ChemicalContaminants/ucm053549.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053549.htm) (updated July 2006); FDA, “Survey Data on Acrylamide
9 in Food: Total Diet Study Results,” publicly available online at [http://www.fda.gov/Food/
10 FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/ChemicalContaminants/ucm053566.htm) (updated October 2006).

11 27. Defendants’ Products contain sufficient quantities of acrylamide such that
12 consumers who eat the Products are thereby exposed to acrylamide. The route of exposure for the
13 violations is direct ingestion when consumers eat the Products. These exposures occur in homes,
14 schools, workplaces, and everywhere else throughout California where the Products are
15 consumed.

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

18 29. Any person acting in the public interest has standing to enforce violations of
19 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
20 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
21 within such time. Health & Safety Code § 25249.7(d).

22 30. More than sixty days prior to naming each Defendant in this lawsuit, CEH
23 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, to
24 the District Attorneys of every county in California, to the City Attorneys of every California city
25 with a population greater than 750,000, and to each of the named Defendants. In compliance with
26 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
27 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
28 time period during which violations occurred; (4) specific descriptions of the violations, including

1 (a) the routes of exposure to acrylamide from the Products, and (b) the specific type of Products
2 sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
3 chemical that is the subject of the violations described in each Notice.

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

17 32. None of the public prosecutors with the authority to prosecute violations of
18 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
19 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
20 of CEH’s Notices.

21 33. Defendants both know and intend that individuals will consume the Products, thus
22 exposing them to acrylamide.

23 34. Under Proposition 65, an exposure is “knowing” where the party responsible for
24 such exposure has:

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

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

1 § 12601).

2 35. As companies that manufacture, import, distribute, and/or sell the Products for use
3 in the California marketplace, Defendants know or should know that the Products contain
4 acrylamide and that individuals who consume the Products will be exposed to acrylamide. The
5 acrylamide exposures to consumers who eat the Products are a natural and foreseeable
6 consequence of Defendants' placing the Products into the stream of commerce.

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

9 37. Defendants also have constructive knowledge that their Products contain
10 acrylamide due to the widespread media coverage concerning the problem of acrylamide in food
11 products in general, and due to published data confirming the presence of high levels of
12 acrylamide in the Products in particular.

13 38. Nevertheless, Defendants continue to expose consumers to acrylamide without
14 prior clear and reasonable warnings regarding the carcinogenic hazards of acrylamide.

15 39. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
16 filing this Complaint.

17 40. Any person "violating or threatening to violate" Proposition 65 may be enjoined in
18 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is
19 defined to mean "to create a condition in which there is a substantial probability that a violation
20 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not
21 to exceed \$2,500 per day for each violation of Proposition 65.

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

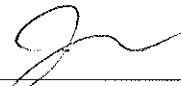
4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: November 9, 2017

Respectfully submitted,

LEXINGTON LAW GROUP



Joseph Mann
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH