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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. )

MRS. GOOCH'S NATURAL FOOD )  
MARKETS, INC.; WHOLE FOODS MARKET )  
CALIFORNIA, INC.; LASSONDE PAPPAS )  
AND COMPANY, INC.; CLEMENT PAPPAS )  
AND COMPANY, INC.; CLIFFSTAR LLC; )  
CLIFFSTAR CALIFORNIA LLC; KNUDSEN )  
& SONS, INC.; SMUCKER NATURAL )  
FOODS, INC.; and DOES 5 through 200, )  
inclusive, )

Defendants. )

**FILED BY FAX**  
ALAMEDA COUNTY

April 30, 2018

CLERK OF  
THE SUPERIOR COURT  
By Burt Moskaira, Deputy

CASE NUMBER:  
**RG17852777**

Case No. RG 17-852777

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

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

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

20 **PARTIES**

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

1 remove toxic chemicals and to make them safer. CEH also provides information to Californians  
2 about the health risks associated with exposure to hazardous substances, where manufacturers and  
3 other responsible parties fail to do so.

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

11 6. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. is a person in the  
12 course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
13 WHOLE FOODS MARKET CALIFORNIA, INC. manufactures, distributes, and/or sells the  
14 Products for sale and consumption in California. CEH's claims against Defendant WHOLE  
15 FOODS MARKET CALIFORNIA, INC. in this action are limited to Products sold under the 365  
16 Everyday Value Brand and Products sold by Defendants KNUDSEN & SONS, INC. and  
17 SMUCKER NATURAL FOODS, INC.

18 7. Defendant LASSONDE PAPPAS AND COMPANY, INC. is a person in the  
19 course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
20 LASSONDE PAPPAS AND COMPANY, INC. manufactures, distributes, and/or sells the  
21 Products for sale and consumption in California.

22 8. Defendant CLEMENT PAPPAS AND COMPANY, INC. is a person in the course  
23 of doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
24 CLEMENT PAPPAS AND COMPANY, INC. manufactures, distributes, and/or sells the  
25 Products for sale and consumption in California.

26 9. Defendant CLIFFSTAR LLC is a person in the course of doing business within the  
27 meaning of Health & Safety Code § 25249.11. Defendant CLIFFSTAR LLC manufactures,  
28 distributes, and/or sells the Products for sale and consumption in California.



1 California and/or by having such other contacts with California so as to render the exercise of  
2 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
3 substantial justice.

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

6 **BACKGROUND FACTS**

7 19. The People of the State of California have declared by initiative under Proposition  
8 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
9 other reproductive harm.” Proposition 65, § 1(b).

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

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

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

1 60:389; Vogt, R., *et al.*, “Cancer and non-cancer health effects from food contaminant exposures  
2 for children and adults in California: a risk assessment,” *Environmental Health* (2012) Vol.  
3 11:83.

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

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

22 24. No clear and reasonable warning is provided with the Products regarding the  
23 carcinogenic hazards of acrylamide.

24 25. Any person acting in the public interest has standing to enforce violations of  
25 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
26 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
27 within such time. Health & Safety Code § 25249.7(d).

28

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

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

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

28

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

3           30. Under Proposition 65, an exposure is “knowing” where the party responsible for  
4 such exposure has:

5                           knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant  
6 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that  
7 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           31. As companies that manufacture, import, distribute, and/or sell the Products for use  
12 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           32. Defendants have been informed of the acrylamide in their Products by the 60-Day  
17 Notice of Violation and accompanying Certificate of Merit served on them by CEH.

18           33. 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/prune-juice-benefits-arent-just-for-the-elderly>.

23           34. Nevertheless, Defendants continue to expose consumers to acrylamide without  
24 prior clear and reasonable warnings regarding the carcinogenic hazards of acrylamide.

25           35. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
26 filing this Complaint.  
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1 36. Any person “violating or threatening to violate” Proposition 65 may be enjoined in  
2 any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to violate” is  
3 defined to mean “to create a condition in which there is a substantial probability that a violation  
4 will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not  
5 to exceed \$2,500 per day for each violation of Proposition 65.

6  
7 **FIRST CAUSE OF ACTION**  
**(Violations of Health & Safety Code § 25249.6)**

8 37. CEH realleges and incorporates by reference as if specifically set forth herein  
9 Paragraphs 1 through 36, inclusive.

10 38. By placing the Products into the stream of commerce, each Defendant is a person  
11 in the course of doing business within the meaning of Health & Safety Code § 25249.11.

12 39. Acrylamide is a chemical listed by the State of California as known to cause  
13 cancer.

14 40. Each Defendant knows that average use of the Products will expose users of its  
15 Products to acrylamide. Each Defendant intends that its Products be consumed in a manner that  
16 results in exposures to acrylamide from the Products.

17 41. Defendants have failed, and continue to fail, to provide clear and reasonable  
18 warnings regarding the carcinogenicity of acrylamide to consumers of the Products.

19 42. By committing the acts alleged above, Defendants have at all times relevant to this  
20 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to  
21 acrylamide without first giving clear and reasonable warnings to such individuals regarding the  
22 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:  
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1           1.       That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
2 permanently enjoin Defendants from offering Products for sale in California without providing  
3 prior clear and reasonable warnings, as CEH shall specify in further application to the Court;

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

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

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

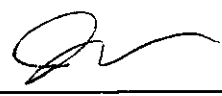
12          5.       That the Court grant such other and further relief as may be just and proper.

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Dated: April 30, 2018

Respectfully submitted,

LEXINGTON LAW GROUP



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Joseph Mann  
Attorney for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH