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Assigned for All Purposes
Judge Glenda Sanders

Attorneys for Plaintiff
CALSAFE RESEARCH CENTER, INC.

CX-101

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE-CENTRAL JUDICIAL DISTRICT

CALSAFE RESEARCH CENTER, INC., a
California non-profit corporation

Plaintiff,

v.

MARY'S GONE CRACKERS, INC, A
Delaware Corporation; and DOES 1 to 10,

Defendants.

CASE No.: 30-2021-01187926-CU-TT-CXC

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
OTHER RELIEF**

Health & Safety Code §25249.5, *et seq.*

Plaintiff CALSAFE RESEARCH CENTER, INC. ("PLAINTIFF" or "CRC") brings this
action in the interests of the general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the continuing failure of Defendants MARY'S GONE
CRACKERS, INC ("MGC") and DOES 1-10. (hereinafter individually referred to as
DEFENDANT" or collectively as "DEFENDANTS") to warn consumers in California that they are
being exposed to acrylamide, a chemical which is known to the State of California to cause cancer,
birth defects and other reproductive harm. According to the Safe Drinking Water and Toxics
Enforcement Act of 1986, Health and Safety Code ("H&S Code") section 25249.5 (also known as
and referred to hereinafter as "Proposition 65"), businesses must provide persons with a "clear and

1 reasonable warning” before exposing individuals to chemicals known to the state to cause cancer or
2 reproductive harm.

3 2. Defendants manufacture, package, distribute, market, and/or sell in California certain Herb
4 Crackers products containing acrylamide (the “SUBJECT PRODUCTS”). The Subject Products
5 include Mary’s Gone Crackers Herb Crackers.

6 3. Lead, cadmium and/or acrylamide (hereinafter, the “LISTED CHEMICALS”) are chemicals
7 known to the State of California to cause cancer, birth defects and other reproductive harm.

8 4. Consumption of the SUBJECT PRODUCTS causes exposures to the LISTED CHEMICALS
9 at levels requiring a “clear and reasonable warning” under Proposition 65. Defendants exposed
10 consumers to the LISTED CHEMICALS and have failed to provide the health hazard warnings
11 required by Proposition 65.

12 5. Defendants continued manufacturing, packaging, distributing, marketing and/or sales of the
13 SUBJECT PRODUCTS without the required health hazard warnings, causes, or threatens to cause,
14 individuals to be involuntarily, unknowingly and unwittingly exposed to levels of the LISTED
15 CHEMICALS that violate Proposition 65.

16 **PARTIES**

17 6. Plaintiff, CRC is a non-profit corporation organized under California law. CRC is dedicated
18 to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer
19 protection, worker safety, and corporate responsibility.

20 7. CRC is a person within the meaning of H&S Code §25249.11 and brings this enforcement
21 action in the public interest pursuant to H&S Code §25249.7(d). H&S Code § 25249.7 (d) specifies
22 that actions to enforce Proposition 65 may be brought by a person in the public interest, provided
23 certain notice requirements and no other public prosecutor is diligently prosecuting an action for the
24 same violation(s).

25 8. MARY'S GONE CRACKERS, INC ("MGC") is now, and was at all times relevant herein,
26 a Delaware Corporation organized under the laws of Delaware and is doing business within the
27 meaning of H&S Code §25249.11.

1 9. Defendants own, administer, direct, control and/or operate facilities and/or agents,
2 distributors, sellers, marketers or other retail operations who place their SUBJECT PRODUCTS
3 into the stream of commerce in California (including but not limited to Orange County) under the
4 brand name Mary's Gone Crackers, Inc. and other brand names, which contain the LISTED
5 CHEMICALS without first giving clear and reasonable warnings.

6 10. Defendants separately and each of them, are or were, at all times relevant to the claims in
7 this Complaint and continuing through the present, legally responsible for compliance with the
8 provisions of Proposition 65. Whenever an allegation regarding any act or omission of a Defendant
9 is made herein, such allegation shall be deemed to mean that Defendant, or its agent, officer,
10 director, manager, supervisor, or employee did, or so authorized, or failed to do, such acts while
11 engaged in the affairs of Defendant's business operations and/or while acting within the course and
12 scope of their employment or while conducting business for Defendant(s) for a commercial purpose.

13 11. In this Complaint, when reference is made to any act or omission of a Defendant, such
14 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
15 representatives of Defendant acted or authorized such actions, and/or negligently failed and omitted
16 to act or adequately and properly supervise, control or direct its employees and agents while engaged
17 in the management, direction, operation or control of the affairs of the business organization.
18 Whenever reference is made to any act or omission of any Defendant, such allegation shall be
19 deemed to mean the act or omission of each Defendant acting individually, jointly, and severally as
20 defined by Civil Code Section 1430 *et seq.*

21 12. Plaintiff does not know the true names, capacities and liabilities of Defendants DOES Nos.
22 1-10, inclusive, and therefore sues them under fictitious names. Plaintiff will amend this Complaint
23 to allege the true name and capacities of the DOE Defendants upon being ascertained. Each of these
24 Defendants was in some way legally responsible for the acts, omissions, and/or violations alleged
25 herein.

1 **JURISDICTION AND VENUE**

2 13. This Court has jurisdiction over this action pursuant to California Constitution Article VI,
3 Section 10, which grants the Superior Court “original jurisdiction in all causes except those given
4 by statute to other trial courts.” The statute under which this action is brought does not specify any
5 other court with jurisdiction.

6 14. This Court has jurisdiction over Defendants because they are business entities that do
7 sufficient business, have sufficient minimum contacts in California or otherwise intentionally avail
8 themselves of the California market, through the sale, marketing and use of their SUBJECT
9 PRODUCTS in California, to render the exercise of jurisdiction over them by the California courts
10 consistent with traditional notions of fair play and substantial justice.

11 15. Venue in this action is proper in the Orange County Superior Court because the cause, or
12 part thereof, arises in the County of Orange since Defendants’ products are marketed, offered for
13 sale, sold, used, and/or consumed in this county.

14 **STATUTORY BACKGROUND**

15 16. On February 27, 1987, the State of California officially listed lead as a chemical known to
16 cause reproductive toxicity. Lead became subject to the warning requirement one year later and was
17 therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning
18 on February 27, 1988. (27 California Code of Regulations (“CCR”) §25000, *et seq.*; H&S Code
19 §25249.5, *et seq.*).

20 17. On October 1, 1992, the State of California officially listed lead and lead compounds as
21 chemicals known to cause cancer. Lead and lead compounds became subject to the warning
22 requirement one year later and were therefore subject to the “clear and reasonable” warning
23 requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et seq.*; H&S Code
24 §25249.6, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose level for lead is
25 0.5 µg/day (micrograms a day) for reproductive toxicity and the no significant risk level for
26 carcinogens is 15µg/day (oral).

1 18. On May 1, 1997, the State of California officially listed the chemical cadmium as a chemical
2 known to cause reproductive toxicity. Cadmium became subject to the warning requirement one
3 year later and was therefore subject to the “clear and reasonable” warning requirements of
4 Proposition 65 beginning on May 1, 1998. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*).
5 Due to the high toxicity of cadmium, the maximum allowable dose level for cadmium is 4.1 µg/day
6 (micrograms a day) for reproductive toxicity. (27 CCR § 25805(b).)

7 19. On October 1, 1987, the State of California officially listed the chemicals cadmium and
8 cadmium compounds as chemicals known to cause cancer. Cadmium and cadmium compounds
9 became subject to the warning requirement one year later and were therefore subject to the “clear
10 and reasonable” warning requirements of Proposition 65 beginning on October 1, 1988 (27 CCR
11 §25000, *et seq.*; H&S Code §25249.6 *et seq.*).

12 20. Acrylamide was officially listed as a chemical known to cause cancer on January 1, 1990.
13 On February 25, 2011, the State of California officially listed acrylamide as a chemical known to
14 cause developmental toxicity and male reproductive toxicity. (State of California EPA OEHHA Safe
15 Drinking Water and Toxic Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer
16 and Reproductive Toxicity.) The Maximum Allowable Dose Level (“MADL”) for acrylamide as a
17 chemical known to cause reproductive toxicity is 140 micrograms per day. (Cal. Code Regs., tit. 27,
18 §25805, subd. (b).) The No Significant Risk Level (“NSRL”) for acrylamide as a chemical known
19 to cause cancer is 0.2 micrograms per day. (Cal. Code Regs., tit. 27, §25705, subd. (b).)

20 21. To test Defendants’ SUBJECT PRODUCTS for lead, cadmium and acrylamide, Plaintiff
21 hired a well-respected and accredited testing laboratory. The results of testing undertaken by
22 Plaintiff of Defendants’ SUBJECT PRODUCTS show that the SUBJECT PRODUCTS tested were
23 in violation of the 0.5 µg/day “safe harbor” daily dose limits set forth for lead, and/or 4.1 µg/day
24 “safe harbor” daily dose limits for cadmium, and/or 0.2 µg/day NSRL for acrylamide in Proposition
25 65’s regulations. Very significant is the fact that people are being exposed to lead, cadmium, and/or
26 acrylamide through ingestion as opposed to other not as harmful methods of exposure such as dermal

1 exposure. Ingestion of lead, cadmium, and/or acrylamide produces much higher exposure levels and
2 health risks than dermal exposure to these chemicals.

3 22. At all times relevant to this action, Defendants, therefore, have knowingly and intentionally
4 exposed the consumers of the SUBJECT PRODUCTS to the LISTED CHEMICALS without first
5 giving a clear and reasonable warning to such individuals.

6 23. The SUBJECT PRODUCTS have allegedly been sold by Defendants for use in California
7 since at least October 29, 2017. The SUBJECT PRODUCTS continue to be distributed and sold in
8 California without the requisite warning information.

9 24. As a proximate result of acts by Defendants, as persons in the course of doing business within
10 the meaning of Health & Safety Code §25249.11, individuals throughout the State of California,
11 including in the County of Orange have been exposed to the LISTED CHEMICALS without a clear
12 and reasonable warning on the SUBJECT PRODUCTS. The individuals subject to the violative
13 exposures include normal and foreseeable users of the SUBJECT PRODUCTS, as well as all other
14 persons exposed to the SUBJECT PRODUCTS.

15 25. On October 29, 2020, CRC served MGC and each of the appropriate public enforcement
16 agencies with documents entitled “Notice of Violations of California Health & Safety Code Section
17 25249.5” that provided MGC and the public enforcement agencies with notice that MGC was in
18 violation of Proposition 65 for failing to warn purchasers and individuals using the SUBJECT
19 PRODUCTS that the consumption of the SUBJECT PRODUCTS exposes them to lead, cadmium
20 and/or acrylamide, chemicals known to the State of California to cause cancer and/or reproductive
21 toxicity (“Prop. 65 Notices”). True and correct copy of the 60-Day Notice (“NOTICE”) is attached
22 hereto as **Exhibit “A”** and is incorporated by reference. The NOTICE is also available on the
23 Attorney General’s website located at <http://oag.ca.gov/prop65>.

24 26. The NOTICE was issued pursuant to, and in compliance with, the requirements of H&S
25 Code §25249.7(d) and the statute’s implementing regulations regarding the notice of the violations
26 to be given to certain public enforcement agencies and to the violator. The NOTICE included, *inter*
27 *alia*, the following information: the name, address, and telephone number of the noticing individual;

1 the name of the alleged violator(s); the statute violated; the approximate time period during which
2 violations occurred; and descriptions of the violations including the chemicals involved, the routes
3 of toxic exposure, and the specific product or type of product causing the violations.

4 27. MGC was also provided copies of the document with the NOTICE entitled "The Safe
5 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also
6 known as Appendix A to Title 27 of CCR §25903, via Certified Mail.

7 28. The California Attorney General was provided copies of the NOTICE and a Certificate of
8 Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case
9 for this action and attaching factual information sufficient to establish a basis for the certificate,
10 including the identity of the persons consulted with and relied on by the certifier, and the facts,
11 studies, or other data reviewed by those persons, pursuant to H&S Code §25249.7(h) (2) via online
12 submission.

13 29. After expiration of the sixty (60) day notice period, the appropriate public enforcement
14 agencies failed to commence and diligently prosecute a cause of action under H&S Code §25249.5,
15 et seq. against Defendants based on the allegations herein.

16 **FIRST CAUSE OF ACTION**

17 **For Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. concerning**
18 **the SUBJECT PRODUCTS described in the**
19 **October 29, 2020 Prop. 65 NOTICE of Violation**
20 **(Against Defendants)**

21 30. Plaintiff refers to, and incorporates by reference, the allegations of all preceding Paragraphs
22 this Complaint, as though fully set forth herein.

23 31. By committing the acts alleged in this Complaint, Defendants at all times relevant to this
24 action, and continuing through the present, have violated, or threaten to violate, H&S Code §25249.6
25 by, in the course of doing business, knowingly and intentionally exposing individuals in California
26 to chemicals known to the State of California to cause cancer or reproductive toxicity without first
27 giving clear and reasonable warnings to such persons who consume the SUBJECT PRODUCTS
28 containing the LISTED CHEMICALS, pursuant to H&S Code §§ 25249.6 and 25249.11(f).

1 32. By the above-described acts, Defendants have violated, or threaten to violate, H&S Code
2 §25249.6 and are therefore subject to preliminary and permanent injunctions ordering Defendants
3 to stop violating Proposition 65, to provide warnings to all present and future customers, and to
4 provide warnings to DEFENDANTS' past customers who purchased or used the SUBJECT
5 PRODUCTS without receiving a clear and reasonable warning.

6 33. An action for injunctive relief under Proposition 65 is specifically authorized by H&S Code
7 §25249.7(a).

8 34. Continuing commission by Defendants of the acts alleged above will irreparably harm the
9 citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy
10 at law.

11 35. In the absence of preliminary and then permanent injunctive relief, Defendants will continue
12 to create a substantial risk of irreparable injury by continuing to cause consumers to be involuntarily,
13 unknowingly and unwittingly exposed to the LISTED CHEMICALS through the consumption of
14 the SUBJECT PRODUCTS.

15 **SECOND CAUSE OF ACTION**
16 **For Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
17 **SUBJECT PRODUCTS described in the October 29, 2020 Prop. 65 NOTICES of Violation**
(Against Defendants)

18 36. Plaintiff refers to, and incorporates by reference, the allegations of all preceding Paragraphs
19 this Complaint, as though fully set forth herein.

20 37. By committing the acts alleged in this Complaint, Defendants at all times relevant to this
21 action, and continuing through the present, have violated H&S Code §25249.6 by, in the course of
22 doing business, knowingly and intentionally exposing individuals in California to chemicals known
23 to the State of California to cause cancer or reproductive toxicity without first giving clear and
24 reasonable warnings to such persons who consume the SUBJECT PRODUCTS containing the
25 LISTED CHEMICALS, pursuant to H&S Code §§ 25249.6 and 25249.11(f).

1 38. By the above-described acts, Defendants are liable, pursuant to H&S Code §25249.7(b), for
2 a civil penalty of up to \$2,500 per day per violation for each unlawful exposure to the LISTED
3 CHEMICALS from the SUBJECT PRODUCTS, in an amount in excess of \$1,000,000.00

4 **THE NEED FOR INJUNCTIVE RELIEF**

5
6 39. Plaintiff refers to, and incorporates by reference, the allegations of all preceding Paragraphs
7 this Complaint, as though fully set forth herein.

8 40. By committing the acts alleged in this Complaint, Defendants have caused or threaten to
9 cause irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
10 of equitable relief, Defendants will continue to create a substantial risk of irreparable injury by
11 continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
12 CHEMICALS through the consumption of the SUBJECT PRODUCTS.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against Defendants, and each of them, and
15 DOES 1 through 10, as follows:

- 16 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b), enjoining
17 Defendants, their agents, employees, assigns and all persons acting in concert or
18 participating with DEFENDANTS, from manufacturing, distributing, marketing or selling
19 the SUBJECT PRODUCTS in California without first providing a clear and reasonable
20 warning, within the meaning of Proposition 65, that the consumers of the SUBJECT
21 PRODUCTS are exposed to the LISTED CHEMICALS;
- 22 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling DEFENDANTS to
23 identify and locate each individual who has purchased the SUBJECT PRODUCTS since
24 October 29, 2017, and to provide a warning to such person that the consumption of the
25 SUBJECT PRODUCTS will expose the consumer to chemicals known to cause cancer, birth
26 defects, and other reproductive harm;

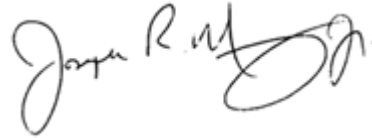
1 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b), against
2 DEFENDANTS in the amount of \$2,500 per day for each violation of Proposition 65, in an
3 amount in excess of \$1,000,000.00, according to proof;

4 D. An award to PLAINTIFF of its reasonable attorney's fees and costs of suit pursuant to
5 California Code of Civil Procedure §§ 1032 *et. seq* and 1021.5, as PLAINTIFF shall specify
6 in further applications to the Court; and,

7 E. For such other and further relief as the Court may deem just and proper.
8

9 Dated March 5, 2021

MANNING LAW, A.P.C

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By: _____

12 Joseph R. Manning, Jr., Esq.
13 Babak Hashemi, Esq.
14 Attorneys for Plaintiff
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