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John A. Clarke, Executive Officer/Clerk
By S. Gabb Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL LOCKYER, Attorney General of the State of California, Plaintiff, v. FRITO-LAY, INC., PEPSICO, INC., H.J. HEINZ, INC., KETTLE FOODS, INC., KFC CORPORATION, LANCE, INC., THE PROCTER & GAMBLE DISTRIBUTING COMPANY, THE PROCTER & GAMBLE MANUFACTURING COMPANY, WENDY'S INTERNATIONAL, INC., MCDONALD'S CORPORATION, BURGER KING CORPORATION and DOES 1 through 100, Defendants.	Case No.: BC338956 COMPLAIN FOR CIVIL PENALTY AND INJUNCTIVE RELIEF Toxic Tort/Environmental (30)

I. INTRODUCTION

1. This complaint seeks an injunction to remedy defendants' failure to warn consumers that certain processed potato products, such as potato chips, frozen hash browns, and french fries sold by defendants expose consumers to acrylamide, a chemical known to the State

of California to cause cancer. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing them to such chemicals.

II. PARTIES

2. Plaintiffs are the People of the State of California, by and through the Attorney General of California, Bill Lockyer. Health and Safety Code section 25249.7, subdivision (c), provides that actions to enforce Proposition 65 may be brought by the Attorney General in the name of the People of the State of California. Government Code section 12607 authorizes the Attorney General to bring an action for equitable relief in the name of the People of the State of California against any person to protect the natural resources of the State from pollution, impairment, or destruction. Business and Professions Code section 17200 provides that actions to prohibit unfair and unlawful business practices may be brought by the Attorney General in the name of the People of the State of California.

3. Defendant Frito-Lay, Inc., is a business entity that manufactures products for sale to consumers within the State of California, including, but not limited to, "Lay's Potato Chips" and "Lay's Potato Crisps."

4. Defendant PepsiCo, Inc. is the owner of Frito-Lay, Inc., a business entity that manufactures products for sale to consumers within the State of California, including, but not limited to, "Lay's Potato Chips" and "Lay's Potato Crisps."

5. Defendant H.J. Heinz, Inc., is a business entity that manufactures products for sale to consumers within the State of California, including, but not limited to, frozen potato products such as "Ore-Ida" brand french fries.

6. Defendant Kettle Foods, Inc., is a business entity that manufactures products for sale to consumers within the State of California, including, but not limited to, "Kettle Chips" potato chips.

7. Defendant KFC Corporation is a business entity that manufactures and sells products to consumers within the State of California, including, but not limited to, "Potato Wedges."

8. Defendant Lance, Inc., is the owner of Cape Cod Potato Chips, Inc., which manufactures products for sale to consumers within the State of California, including, but not limited to, "Cape Cod Potato Chips."

9. Defendant The Procter & Gamble Distributing Company is a business entity that distributes and/or sells products to consumers within the State of California, including, but not limited to "Pringles" potato chips.

10. Defendant The Procter & Gamble Manufacturing Company is a business entity that manufactures products for sale to consumers within California, including, but not limited to, "Pringles" potato chips.

11. Defendant Wendy's International, Inc., is a business entity that manufactures and sells products to consumers within the State of California, including, but not limited to, french fries.

12. Defendant McDonald's Corporation is a business entity that manufactures and sells products to consumers within the State of California, including but not limited to, french fries.

13. Defendant Burger King Corporation is a business entity that manufactures and sells products to consumers within the State of California, including but not limited to, french fries.

14. The true names and capacities of the defendants sued herein as Does 1 through 100 are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of these defendants when they have been determined. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.

16. This Court has jurisdiction over the defendants named above because they do sufficient business in California, or otherwise have sufficient minimum contacts in California to

render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

17. Venue is proper in this Court because the cause arises in the County of Los Angeles, where some of the violations of law have occurred.

IV. STATUTORY BACKGROUND

A. Proposition 65

18. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by a vote of the People in November of 1986.

19. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

> No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10

20. Proposition 65 also establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code § 25249.8.) No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. (Id., § 25249.10, subd. (b).)

21. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To "threaten to violate" is defined to mean "to create a condition in which there is a substantial probability that a violation will occur." (Id., § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to $2,500 per day for each violation, recoverable in a civil action. (Id., § 25249.7, subd. (b).) Actions to enforce the law "may be brought by the Attorney General in the name of the People of the State of California or by any district attorney". (Id., § 25249.7, subd. (c).)

22. Implementing regulations promulgated by the Health and Welfare Agency provide that the warning method "must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior

to exposure." (Cal. Code Regs., tit. 22, § 12601(a).)

23. The regulations prescribe certain types of warnings that are considered valid, including: (A) warnings on labels, (B) identification at the retail outlet through "shelf labeling, signs, menus, or a combination thereof," and (C) " a system of signs, public advertising identifying the system and toll-free information services, that provides clear and reasonable warnings." (Cal. Code Regs., tit. 22, §§ 12601(b)(1)(A)-(C).)

B. The Unfair Competition Act

24. California Business and Professions Code section 17200 provides that "unfair competition shall mean and include unlawful, unfair or fraudulent business practice." Section 17203 of the Business and Professions Code provides that "(a)ny person performing or proposing to perform an act of unfair competition within this state may be enjoined in any court of competent jurisdiction."

25. Section 17206(a) provides that any person violating Section 17200 "shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney." Under section 17205, these penalties are "cumulative to each other and to the remedies or penalties available under all other laws of this state."

V. FACTS

26. Acrylamide was listed under Proposition 65 as a chemical known to the State of California to cause cancer on May 1, 1990. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

27. Lay's Potato Chips, Lay's Potato Crisps, Kettle Chips, Cape Cod Potato Chips, Pringles potato chips, frozen potato products sold by H.J. Heinz, french fries sold by Wendy's International, french fries sold by McDonald's Corporation, french fries sold by Burger King Corporation, and "Potato Wedges" sold by KFC Corporation (hereinafter "the Potato Products"), all contain acrylamide.

28. The acrylamide in the Potato Products is ingested by persons who consume those products in their intended manner. Plaintiffs are informed and believe, and based on that

information and belief allege, that each defendant has known since at least July 1, 2002, that the Potato Products that it sells, distributes, or manufactures, contain acrylamide and cause consumers of the Potato Products to be exposed to acrylamide.

29. Each defendant has failed to provide consumers of the Potato Products with a clear and reasonable warning that they are being exposed to a chemical known to the State of California to cause cancer.

VI. FIRST CAUSE OF ACTION

(For Violation of Proposition 65)

30. Paragraphs 1 through 29 are realleged as if fully set forth herein.

31. Plaintiffs are informed and believe, and based on such information and belief allege, that each defendant employs ten or more persons.

32. By committing the acts alleged above, each defendant has, in the course of doing business, knowingly and intentionally exposed individuals to acrylamide, a chemical known to the State of California to cause cancer, without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

33. Said violations render each defendant liable to plaintiff for civil penalties of up to $2,500 per day for each violation.

VII. SECOND CAUSE OF ACTION

(For Unlawful Business Practices)

34. Paragraphs 1 through 33 are realleged as if fully set forth herein.

35. By committing the acts alleged above, each defendant has engaged in unlawful business practices which constitute unfair competition within the meaning of Business and Professions Code section 17200.

36. Said violations render each defendant liable to plaintiff for civil penalties of up to $2,500 for each violation.

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PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court:

1. Pursuant to the First and Second Causes of Action, grant civil penalties according to proof;

2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions Code sections 17203, enter such preliminary injunctions, permanent injunctions, or other orders prohibiting each defendant from exposing persons within the State of California to acrylamide without providing clear and reasonable warnings, as plaintiffs shall specify in further application to the court;

3. Award plaintiffs their costs of suit;

4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

Dated: 8/26/05

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