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FOR COURT USE ONLY

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUN 01 2009

**CLERK OF THE SUPERIOR COURT  
By Tasha Perry, Deputy**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda  
 STREET ADDRESS: 1225 Fallon Street  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: Oakland, CA 94612  
 BRANCH NAME: Rene C. Davidson Alameda County Courthouse

CASE NAME:  
 People of the State of California v. Snyder's of Hanover, Inc. et al.

**CIVIL CASE COVER SHEET**

**Unlimited** (Amount demanded exceeds \$25,000)  
 **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**

**Counter**  **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **09455286**

JUDGE:  
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- |   |   |  |
|---|---|--|
| <p><b>Auto Tort</b></p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p><b>Non-PI/PD/WD (Other) Tort</b></p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p><b>Employment</b></p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p> | <p><b>Contract</b></p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p><b>Real Property</b></p> <p><input type="checkbox"/> Eminent domain/inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p><b>Unlawful Detainer</b></p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p><b>Judicial Review</b></p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p> | <p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input checked="" type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p><b>Enforcement of Judgment</b></p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p><b>Miscellaneous Civil Complaint</b></p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p><b>Miscellaneous Civil Petition</b></p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p> |
|---|---|--|

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties   | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive
4. Number of causes of action (specify): Two: (1) Violation of Proposition 65; (2) Unlawful Business Practices
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 1, 2009  
 Edward G. Weil

*Edward G. Weil*  
 (SIGNATURE OF PARTY OR ATTORNEY (FOR PARTY))

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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*Edmund G. Brown Jr., Attorney General*

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA

14 **PEOPLE OF THE STATE OF  
15 CALIFORNIA EX REL. EDMUND G.  
16 BROWN JR., ATTORNEY GENERAL OF  
THE STATE OF CALIFORNIA,**

17 Plaintiff,

18 v.

19 **SNYDER'S OF HANOVER, INC., BIRDS  
20 EYE FOODS, INC., CORAZONAS FOOD,  
21 INC., FRITO-LAY, INC., GRUMA  
CORPORATION, H.J. HEINZ COMPANY,  
22 L.P., KETTLE FOODS, INC., LANCE,  
INC., RESERVE BRANDS INC., SNAK  
23 KING CORPORATION, AND DOES 1  
THROUGH 100,**

24 Defendants.

Case No.:

96909455286

**COMPLAINT FOR CIVIL PENALTY  
AND INJUNCTIVE RELIEF**

25  
26 **INTRODUCTION**

27 1. This complaint seeks an injunction to remedy defendants' failure to warn consumers  
28 that certain processed snack food products, such as potato chips, corn chips, bagel chips, pretzels,

1 tortilla chips, and popcorn, sold by defendants expose consumers to acrylamide, a chemical  
2 known to the State of California to cause cancer. Under the Safe Drinking Water and Toxic  
3 Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as “Proposition  
4 65,” businesses must provide persons with a “clear and reasonable warning” before exposing  
5 them to such chemicals.

## 6 **PARTIES**

7 2. Plaintiff is the People of the State of California, by and through the Attorney General  
8 of California, Edmund G. Brown Jr. Health and Safety Code section 25249.7, subdivision (c),  
9 provides that actions to enforce Proposition 65 may be brought by the Attorney General in the  
10 name of the People of the State of California. Government Code section 12607 authorizes the  
11 Attorney General to bring an action for equitable relief in the name of the People of the State of  
12 California against any person to protect the natural resources of the State from pollution,  
13 impairment, or destruction. Business and Professions Code section 17200 provides that actions to  
14 prohibit unfair and unlawful business practices may be brought by the Attorney General in the  
15 name of the People of the State of California.

16 3. Defendant Snyder’s of Hanover, Inc. is a business entity that manufactures, sells,  
17 and/or distributes snack food products containing acrylamide for sale to consumers within the  
18 State of California, including but not limited to cheese puffs, veggie crisps, soy crisps, popcorn,  
19 pretzel crackers, pretzels, and tortilla chips.

20 4. Defendant Birds Eye Foods, Inc. is a business entity that manufactures, sells, and/or  
21 distributes snack food products containing acrylamide for sale to consumers within the State of  
22 California, including but not limited to Hawaiian Luau Barbeque Rings, Erin’s Gourmet Popcorn  
23 Original, Erin’s Old Fashioned Kettle Corn, and Erin’s White Cheddar Gourmet Flavored  
24 Popcorn.

25 5. Defendant Corazonas Food, Inc. is a business entity that manufactures, sells, and/or  
26 distributes snack food products containing acrylamide for sale to consumers within the State of  
27 California, including but not limited to potato chips and tortilla chips.

1           6. Defendant Frito-Lay, Inc. is a business entity that manufactures, sells, and/or  
2 distributes snack food products containing acrylamide for sale to consumers within the State of  
3 California, including but not limited to Cheetos, Frito's Corn Chips, Munchies, Sunchips,  
4 Funyuns, Flat Earth Veggie Crisps, Chester's Snacks, Baken-ets, Rold Gold, Sabritones, Doritos,  
5 Santitas, Stacy's, Tostitos Tortilla Chips, Baked! Cheetos, Baked! Doritos, and Baked! Tostitos  
6 Scoops. This complaint does not allege any violations of Proposition 65 or the Unfair  
7 Competition Law with respect to products covered by a consent judgment entered between Frito-  
8 Lay, Inc. and the People of the State of California in the matter of *People v. Frito-Lay, Inc. et al.*

9           7. Defendant Gruma Corporation, d/b/a Mission Foods Corporation, is a business entity  
10 that manufactures, sells, and/or distributes snack food products containing acrylamide for sale to  
11 consumers within the State of California, including but not limited to tortilla chips.

12           8. Defendant H.J. Heinz Company, L.P., is a business entity that manufactures, sells,  
13 and/or distributes snack food products containing acrylamide for sale to consumers within the  
14 State of California, including but not limited to Bagel Bites and TGI Fridays Potato Skins. This  
15 complaint does not allege any violations of Proposition 65 or the Unfair Competition Law with  
16 respect to products covered by a consent judgment entered between H.J. Heinz Company, L.P.,  
17 and the People of the State of California in the matter of *People v. Frito-Lay, Inc. et al.*

18           9. Defendant Kettle Foods, Inc. is a business entity that manufactures, sells, and/or  
19 distributes snack food products containing acrylamide for sale to consumers within the State of  
20 California, including but not limited to tortilla chips. This complaint does not allege any  
21 violations of Proposition 65 or the Unfair Competition Law with respect to products covered by a  
22 consent judgment entered between Kettle Foods, Inc. and the People of the State of California in  
23 the matter of *People v. Frito-Lay, Inc. et al.*

24           10. Defendant Lance, Inc. is a business entity that manufactures, sells, and/or distributes  
25 snack food products containing acrylamide for sale to consumers within the State of California,  
26 including but not limited to cheese puffs, cheese twisters, and popcorn. This complaint does not  
27 allege any violations of Proposition 65 or the Unfair Competition Law with respect to products  
28

1 covered by a consent judgment entered between Lance, Inc. and the People of the State of  
2 California in the matter of *People v. Frito-Lay, Inc. et al.*

3 11. Defendant Reserve Brands Inc., d/b/a Eagle Snacks, is a business entity that has  
4 manufactured, sold, and/or distributed, and/or continues to manufacture, sell, and/or distribute,  
5 snack food products containing acrylamide for sale to consumers within the State of California,  
6 including but not limited to White Cheddar Bursts, Habanero Poppers, Honey Barbeque Poppers,  
7 Salt & Vinegar Poppers, Sweet Onion Poppers, Cinnamon Sugar Bursts, and Dulce de Leche  
8 Bursts.

9 12. Defendant Snak King Corporation is a business entity that manufactures, sells, and/or  
10 distributes snack food products containing acrylamide for sale to consumers within the State of  
11 California, including but not limited to cheese curls, cheese puffs, tortilla chips, tortilla strips, hot  
12 fries, "guacachips," "jalapenitos," and "salsitas."

13 13. The true names and capacities of the defendants sued herein as Does 1 through 100  
14 are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend  
15 this complaint to allege the true names and capacities of these defendants when they have been  
16 determined.

### 17 **JURISDICTION AND VENUE**

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

20 15. This Court has jurisdiction over the defendants named above because they do  
21 sufficient business in California, or otherwise have sufficient minimum contacts in California to  
22 render the exercise of jurisdiction over them by the California courts consistent with traditional  
23 notions of fair play and substantial justice.

24 16. Venue is proper in this Court because the cause arises in the County of Alameda,  
25 where some of the violations of law have occurred.

26 ///

27 ///

28 ///

## STATUTORY BACKGROUND

### I. PROPOSITION 65

17. 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.

18. 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.”

19. 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).)

20. Proposition 65 provides that any person that “violates or threatens 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).)

21. Implementing regulations promulgated by the State’s lead agency for implementation of Proposition 65 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. 27, § 25601.)

22. 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

1 identifying the system and toll-free information services, or any other system that provides clear  
2 and reasonable warnings.” (Cal. Code Regs., tit. 27, § 25603.1, subds. (a) - (d).)

3 **II. THE UNFAIR COMPETITION LAW**

4 23. California Business and Professions Code section 17200 provides that “unfair  
5 competition shall mean and include any unlawful, unfair or fraudulent business act or  
6 practice . . . .” Section 17203 of the Business and Professions Code provides that “[a]ny person  
7 who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any  
8 court of competent jurisdiction.”

9 24. California Business and Professions Code section 17206, subdivision (a), provides  
10 that any person violating Section 17200 “shall be liable for a civil penalty not to exceed two  
11 thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered  
12 in a civil action brought in the name of the people of the State of California by the Attorney  
13 General[] [or] by any district attorney . . . .” Under section 17205, these penalties are  
14 “cumulative to each other and to the remedies or penalties available under all other laws of this  
15 state.”

16 **FACTS**

17 25. Acrylamide was listed under Proposition 65 as a chemical known to the State of  
18 California to cause cancer on January 1, 1990. (Cal. Code Regs., tit. 27, § 27001, subd. (b).)

19 26. The following allegation is likely to have evidentiary support after a reasonable  
20 opportunity for further investigation or discovery: Potato chips, veggie chips and crisps, tortilla  
21 chips, pretzels, popcorn, and other snack food products sold by Snyder’s of Hanover, Inc., Birds  
22 Eye Foods, Inc., Corazonas Food, Inc., Frito-Lay, Inc., Gruma Corporation, H.J. Heinz, Inc.,  
23 Kettle Foods, Inc., Lance, Inc., Reserve Brands Inc., and Snak King Corporation (hereinafter “the  
24 Snack Food Products”) all contain acrylamide. The acrylamide in the Snack Food Products is  
25 ingested by persons who consume those products in their intended manner.

26 27. Each defendant has manufactured, distributed, and/or sold Snack Food Products for  
27 sale or use within the State of California.

28

1 28. The following allegation is likely to have evidentiary support after a reasonable  
2 opportunity for further investigation or discovery: Each defendant employs at least 10 or more  
3 persons.

4 29. The following allegation is likely to have evidentiary support after a reasonable  
5 opportunity for further investigation or discovery: Each defendant has known since at least July 1,  
6 2002, that the Snack Food Products that it sells, distributes, and/or manufactures contain  
7 acrylamide and cause consumers of the Snack Food Products to be exposed to acrylamide.

8 30. Each defendant has failed to provide consumers of the Snack Food Products with a  
9 clear and reasonable warning that they are being exposed to a chemical known to the State of  
10 California to cause cancer.

11 **FIRST CAUSE OF ACTION**

12 (For Violation of Proposition 65)

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

14 32. Each defendant employs ten or more persons.

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

19 34. Said violations render each defendant liable to plaintiff for civil penalties of up to  
20 \$2,500 per day for each violation.

21 **SECOND CAUSE OF ACTION**

22 (For Unlawful Business Practices)

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

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

27 37. Said violations render each defendant liable to plaintiff for civil penalties of up to  
28 \$2,500 for each violation.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays 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 section 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 plaintiff shall specify in further application to the Court;
3. Award plaintiff its costs of suit;
4. Grant such other and further relief as the Court deems just and proper.

Dated: June 1, 2009

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
EDWARD G. WEIL  
Supervising Deputy Attorney General



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