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PRACTICE CONCENTRATED IN TOXIC  
TORT & ENVIRONMENTAL LITIGATION  
OCCUPATIONAL & ENVIRONMENTAL LUNG  
DISEASE, CANCER, AND TOXIC INJURIES

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Attorneys for Plaintiff,  
Council for Education and  
Research on Toxics ("CERT")

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

COUNCIL FOR EDUCATION AND )	CASE NO. BC
RESEARCH ON TOXICS, a California )	
corporation, acting as a private )	<i>Assigned to the Honorable</i>
attorney general in the public )	
interest; )	
)	
Plaintiff, )	COMPLAINT FOR VIOLATIONS OF
)	PROPOSITION 65 AND THE UNFAIR
vs. )	BUSINESS PRACTICES ACT
)	
MCDONALD'S CORPORATION; BURGER )	
KING CORPORATION; and DOE )	
DEFENDANTS NO. 1-1000, inclusive )	
)	
Defendants. )	
)	

1 Plaintiff, Council for Education and Research on Toxics,  
2 alleges:

3 1. Plaintiff, Council for Education and Research on Toxics  
4 ("CERT"), is a California public benefit corporation whose charitable  
5 purposes include education and research on toxic substances.  
6 Plaintiff brings this action as a private attorney general in the  
7 public interest pursuant to Health and Safety Code § 25249.7 and  
8 Business and Professions Code § 17203.

9 2. Defendant, McDonald's Corporation, is a foreign  
10 corporation which, at all material times hereto, was doing business  
11 throughout the State of California.

12 3. Defendant, Burger King Corporation, is a foreign  
13 corporation, which at all material times hereto, was doing business  
14 throughout the State of California.

15 4. The true names and capacities of Defendants Does 1  
16 through 1000 are unknown to Plaintiff, who therefore sues said  
17 defendants by such fictitious names. Plaintiff will amend this  
18 complaint to state the true names and capacities of said fictitious  
19 defendants when they have been ascertained.

20 5. Plaintiff is informed and believes and alleges, that  
21 at all material times, Defendants were acting in an individual,  
22 corporate, partnership, associate, conspiratorial or other capacity  
23 or as the agent, employee, co-conspirator, or alter ego of their co-  
24 defendants, and in doing the acts herein alleged, were acting within  
25 the course and scope of their authority as such partner, associate,  
26 agent, employee, co-conspirator, or alter ego, and with the  
27 permission, consent, knowledge, authorization, ratification and  
28 direction of their co-defendants.

JURISDICTION AND VENUE

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6. This Court has jurisdiction over this case pursuant to Cal. Const. Art. VI, § 10, and pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65") and the Unfair Business Practices Act.

7. CERT has satisfied all the jurisdictional conditions precedent to maintaining this action by mailing notices of the violations to the persons entitled to receive them, as required by Health and Safety Code § 25249.7, along with Certificates of Merit and the Summary of Proposition 65, all in accordance with the provisions of 22 C.C.R. § 12903.

8. All said notices of violation were mailed at least 70 days prior the date on which this action was filed (60 days for the notice required by Health and Safety Code § 25249.7(d), plus 10 days for mailing the notice to out-of-state defendants as required by Code of Civil Procedure § 1013).

9. More than 70 days have passed since copies of the notices were mailed to all the above-referenced governmental authorities, and neither the Attorney General, any district attorney, nor any city attorney has filed a complaint against defendants for the violations alleged in the notices.

10. The County of Los Angeles is a proper venue for this action pursuant to Code of Civil Procedure § 395, Health and Safety Code § 25249.7, and Bus. & Prof. Code § 17203, and because the causes of action and many of the violations arose in the County of Los Angeles.

//





GENERAL ALLEGATIONS

1  
2  
3 21. For many years, Defendants have engaged in the fast  
4 food business in California, selling hamburgers and french fries to  
5 millions of customers throughout the State of California.

6 22. Since January 1990 and continuing to the present,  
7 Defendants have exposed and continue to expose numerous consumers  
8 purchasing french fries at all of their restaurants located within  
9 the State of California, including within the cities of Los Angeles,  
10 San Diego, San Francisco, and San Jose, to high levels of acrylamide  
11 - a toxic chemical contained in Defendants' french fries which is  
12 ingested by customers consuming said french fries.

13 23. Exposures to acrylamide unavoidably occurred via  
14 ingestion whenever a consumer purchased and thereafter consumed  
15 Defendants' acrylamide-containing french fries from January 1990 and  
16 continuing to the present.

17 24. Recent scientific studies have shown that Defendants'  
18 french fries contain approximately 100 times more acrylamide than the  
19 maximum level permitted by the World Health Organization for drinking  
20 water.

21 25. Acrylamide is a toxic chemical known to the State of  
22 California to cause cancer and has been listed since January 1, 1990  
23 as a carcinogen on the list of carcinogenic chemicals published by  
24 the Governor of the State of California at 22 California Code of  
25 Regulations § 1200(b).

26 26. Because acrylamide is listed in Proposition 65 as a  
27 carcinogen, pursuant to Health & Safety Code § 25249.6, Defendants  
28 were and are required to warn their customers that their french fries

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1 contain a chemical known by the State of California to cause cancer  
2 before exposing said customers to acrylamide contained in their  
3 french fries.

4 27. Since January 1990, Defendants have violated and  
5 continue to violate California Health & Safety Code § 25249.6 by  
6 exposing millions of individuals within the State of California to  
7 acrylamide without first giving clear and reasonable warnings to said  
8 individuals that their french fries contain a chemical known by the  
9 State of California to cause cancer.

10 28. The violations of California Health & Safety Code §  
11 25249.6 are numerous and have occurred continuously and uninterrupted  
12 since January 1, 1990 (the date on which acrylamide was listed as a  
13 carcinogen on the Governor's List of Chemicals Known to the State to  
14 Cause Cancer) to the present at all of Defendants' restaurants  
15 located within the State of California during this period and at all  
16 places where "take-out" was purchased from Defendants' restaurants.  
17 The timing of the violations is such that they occurred every moment  
18 that every individual within the State of California consumed  
19 Defendants' french fries without first receiving the required  
20 Proposition 65 warnings from January 1990 and continuing to the  
21 present.

22 29. At all material times hereto, Defendants concealed  
23 from Californians and from Plaintiff that their french fries  
24 contained a chemical known to the state to cause cancer.

25 30. At all material times hereto, Defendants fraudulently  
26 concealed from Plaintiff herein and from Californians exposed to  
27 their french fries material facts concerning the toxic, neurotoxic,  
28 and carcinogenic toxic hazards of their french fries.

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31. Defendants' concealment of the carcinogenic hazards of their french fries was sufficiently complete that Plaintiff did not know, nor in the exercise of reasonable care could Plaintiff have known, that Defendants were knowingly and intentionally exposing Californians to carcinogens and reproductive toxins in violation of Proposition 65, until Plaintiff discovered such in April 2002.

32. By mailing Defendants notice of their violations of Proposition 65, the statute of limitations on Plaintiff's claims against Defendants is further equitably tolled.

FIRST CAUSE OF ACTION

Violation of the Safe Drinking Water and Toxic Enforcement Act  
Exposing People to Carcinogen without Warning  
California Health and Safety Code § 25249.6  
(By Plaintiff Against all Defendants)

33. Plaintiff refers to paragraphs 1 through 32, and, by this reference, incorporates said paragraphs hereat in full.

34. At all times material hereto, Defendants were doing business in the State of California.

35. In the course of doing business in the State of California, since at least January 1, 1990 (the date on which acrylamide was listed as a chemical known to the State of California to cause cancer) and continuing to the present, Defendants knowingly and intentionally exposed individuals to acrylamide in their french fries, without first giving clear and reasonable warning to such individuals.

//

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SECOND CAUSE OF ACTION

For Violation of the Unfair Competition Act

Cal. Bus. & Prof. Code §§ 17200 et seq.

(By Plaintiff Against all Defendants)

36. Plaintiff refers to paragraphs 1 through 35, and, by this reference, incorporates said paragraphs hereat as though set forth in full.

37. At all times material hereto, Defendants have conducted business in California, employing more than 10 persons.

38. In the course of doing business in the State of California, beginning at least as early as January 1, 1990, and continuing to the present, Defendants knowingly and intentionally violated laws of the State of California, as set forth hereinafter.

39. Defendants violated California Health and Safety Code § 25249.6 by knowingly and intentionally exposing individuals to acrylamide in their french fries, without first giving clear and reasonable warning to such individuals.

40. Defendants violated Cal. Business & Professions Code § 17500 by labeling their french fries as vegetarian, implying that they were healthy and would combat cancer, even though Defendants knew, or by the exercise of reasonable care should have known, that their french fries contained acrylamide, a chemical known to the State of California to cause cancer, and that such statements were either false or misleading or both.

41. Defendants also violated Business & Professions Code § 17200 et seq. by engaging in the foregoing unlawful, unfair, and fraudulent business practices and business conduct.

PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

Injunctive Relief

1. For a temporary restraining order, preliminary injunction, permanent injunction, and such other injunctive relief as may be had pursuant to Health and Safety Code § 25249.7(a), enjoining Defendants from exposing persons to acrylamide in their french fries sold in the State of California without first providing clear and reasonable warning that their french fries contain a chemical known to the State of California to cause cancer.

2. For a temporary restraining order, preliminary injunction, permanent injunction, and such other injunctive relief as may be had pursuant to Business & Professions Code §§ 17202, 17203, 17204 and 17205, enjoining Defendants from committing the unlawful, unfair, and fraudulent acts alleged herein.

Civil Penalties

3. For civil penalties, pursuant to Health & Safety Code § 25249.7(b), not to exceed \$2,500 per day for each and every violation by each and every Defendant of Proposition 65, in addition to all other penalties established by law.

Specific and Preventive Relief

4. For such specific and preventive relief as may be necessary and appropriate, pursuant to Business & Professions Code § 17202, to enforce any of the penalties ordered by the Court.

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Other Equitable Relief

5. For such other equitable relief, including other cy pres relief, as may be necessary to effectuate justice and to remedy adverse health effects of Californians exposed to acrylamide in Defendants' french fries.

Attorney's Fees and Costs

6. For Plaintiff's costs and reasonable attorney's fees, pursuant to California Code of Civil Procedure § 1021.5.

Other Relief

7. For such other and additional relief as the Court deems proper and just.

DATED: September 3, 2002

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\_\_\_\_\_  
RAPHAEL METZGER, ESQ.  
Attorneys for Plaintiff  
Council for Education and  
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