

1 Stephen Ure, Esq., (CSB# 188244)  
2 **LAW OFFICES OF STEPHEN URE, PC**  
3 11622 El Camino Real, Suite 100  
4 San Diego, CA 92130  
5 Telephone: 619-235-5400

FILED  
NORTH COUNTY DIVISION  
2017 NOV -9 P 12:11  
CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

6 *Attorneys for Plaintiff, Evelyn Wimberley*

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**  
10 **UNLIMITED CIVIL JURISDICTION**  
11

12  
13 **EVELYN WIMBERLEY,** ) **CASE NO. 37-2017-00042748-CU-NP-NC**  
14 )  
15 **Plaintiff,** ) **COMPLAINT FOR CIVIL PENALTIES**  
16 ) **AND INJUNCTIVE RELIEF**  
17 **and** ) *(Cal. Health & Safety Code § 25249.6 et seq.)*  
18 )  
19 **RITE AID CORPORATION,** )  
20 **AND DOES 1 -25 INCLUSIVE** )  
21 **Defendant.** )

22 **NATURE OF THE ACTION**

23 1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,  
24 in the public interest of the citizens of the State of California, to enforce the people's right to be  
25 informed of the dangers from exposures to carbon monoxide, (hereafter "Listed Chemical").

26 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS continuing failures to  
27 warn California citizens about their exposure to the Listed Chemical produced as a result of  
28 combustion during the normal and intended use of the Tripod Grill 18 Inch  
(UPC637503000710) (hereafter "Product(s)"), that the DEFENDANTS manufactured,

**COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**

1 distributed and sold, in the State of California and Products that DEFENDANTS continue to  
2 manufacture, distribute and offer for sale in the State of California.

3 3. High levels of the listed Chemicals are common combustion byproducts produced  
4 during the normal and intended use of the PRODUCT that DEFENDANTS manufacture,  
5 distribute and/or offer for sale to consumers throughout the State of California.

6 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
7 California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No person in the course of  
8 doing business shall knowingly and intentionally expose any individual to a chemical known to  
9 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
10 warning to such individual..." (*Cal. Health & Safety Code § 25249.6.*)

11 5. California identified and listed Carbon Monoxide as a chemical known to cause  
12 birth defects and other reproductive harm. Carbon Monoxide became subject to the warning  
13 requirements of Proposition 65 for developmental toxicity beginning on July 1, 1989. (*27 CCR §*  
14 *27002; Cal. Health & Safety Code § 25249.6.*)

15 6. California identified and listed Soot as a chemical known to cause birth defects and  
16 other reproductive harm. Soot became subject to the warning requirements of Proposition 65 for  
17 developmental toxicity beginning on July 1, 1989. (*27 CCR § 27002; Cal. Health & Safety Code*  
18 *§ 25249.6.*)

19 7. DEFENDANT'S past and continuing failure to warn consumers and/or other  
20 individuals in the State of California about their exposure to the LISTED CHEMICALS in  
21 conjunction with DEFENDANT'S sale of the PRODUCTS is a violation of Proposition 65 and  
22 subjects DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such  
23 violation.

24 8. For DEFENDANT'S violations of Proposition 65, Plaintiff seeks preliminary  
25 injunctive and permanent injunctive relief to compel DEFENDANTS to provide purchasers or  
26 users of the PRODUCTS with the required warning regarding the health hazards of the LISTED  
27 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a.)*)  
28

1           9. Plaintiff also seeks civil penalties against DEFENDANTS for their violations of  
2 Proposition 65, as provides for by California Health & Safety Code § 25249.7(b).

3  
4  
5                                   **PARTIES**

6           10. Plaintiff Evelyn Wimberley is a citizen of the City of Redondo Beach, County of  
7 Los Angeles, in the State of California, who is dedicated to protecting the health of California  
8 citizens through the elimination o reduction of toxic exposures from consumer products, and  
9 brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

10           11. Defendant Rite Aid Corporation (“Rite Aid or "DEFENDANTS") is a person  
11 doing business within the meaning of California Health & Safety Code Sec. 25249.11.

12           12. Defendant Rite Aid manufactures, distributes, and/or offers the PRODUCTS for  
13 sales or use in the State of California or implies by its conduct that it manufactures, distributes  
14 and/or offers the PRODUCTS for sale or use in the State of California.

15                                   **VENUE AND JURISDICTION**

16           13. Venue is proper in the San Diego County Superior Court, pursuant to Code of  
17 Civil Procedure § 394, 495, 395.5, because this Court is a court of competent jurisdiction,  
18 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
19 County of San Diego and/or because DEFENDANTS conducted, and continues to conduct,  
20 business in this County with respect to the PRODUCTS.

21           14. The California Superior Court has jurisdiction over this action pursuant to  
22 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in  
23 all causes except those given by statute to other trial courts.” The statute under which this action  
24 is brought does not specify any other basis of subject matter jurisdiction.

25           15. The California Superior Court has jurisdiction over DEFENDANTS based on  
26 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
27 association that either are citizens of the State of California, have sufficient minimum contacts in  
28 the State of California, or otherwise purposefully avail themselves of the California market.

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
2 courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against Defendant)**

5 16. Plaintiff realleges and incorporates by reference, as if full reference, as if full set  
6 forth herein, Paragraphs 1 through 19, inclusive.

7 17. The citizens of the State of California have expressly stated in the Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.  
9 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
10 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

11 18. Proposition 65 states, “No person in the course of doing business shall knowingly  
12 and intentionally expose any individual to a chemical known to the state to cause cancer or  
13 productive toxicity without first giving clear and reasonable warning to such individual (*Id.*)”

14 19. On or about May 22, 2017 , a sixty-day notice violation, together with the requisite  
15 certificate of merit, was provided to DEFENDANTS and various public enforcement agencies  
16 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in  
17 the State of California were being exposed to the LISTED CHEMICAL resulting from the  
18 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
19 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

20 20. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
21 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
22 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
23 violation of California Health & Safety Code § 25249.6 has intentionally continued to occur  
24 beyond DEFENDANTS' receipt of Plaintiff's sixty-day notice of violation. Plaintiff further  
25 alleges and believes that such violations will continue to occur into the future.

26 21. After receipt of the claims asserted in the sixty-day notices of violation, the  
27 appropriate public enforcement agencies failed to commence and diligently prosecute a cause of  
28 action against DEFENDANTS under Proposition 65.

1           22. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANTS expose users to the LISTED CHEMICALS above the allowable  
3 state limits.

4           23. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
5 distributed, and/or for sale or use in California would expose users to the LISTED CHEMICALS.

6           24. The PRODUCTS, through normal use produces the LISTED CHEMICALS in  
7 such a way as to expose individuals to the LISTED CHEMICALS through inhalation, dermal  
8 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

9           25. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
10 continues to cause consumer exposures to the LISTED CHEMICALS, as such exposure is  
11 defined by 27 CCR§ 25602(b).

12           26. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
13 the PRODUCTS would expose individuals to the LISTED CHEMICALS.

14           27. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from  
15 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
16 accidental participation in the manufacture, distribution and/or offer for sale or use of  
17 PRODUCTS to individuals in the State of California.

18           28. DEFENDANTS failed and continue to fail to provide a “clear and reasonable  
19 warning” to those consumers and/or other individuals in the State of California who were or who  
20 could become exposed to the LISTED CHEMICALS during the reasonably foreseeable use of  
21 the PRODUCTS.

22           29. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
23 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the  
24 reasonably foreseeable use of the PRODUCTS, sold by DEFENDENT without a “clear and  
25 reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm  
26 they have no plain, speedy or adequate remedy at law.

