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NICHOLAS & TOMASEVIC, LLP
Craig M. Nicholas (SBN 178444)
Jake Schulte (SBN 293777)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: craig@nicholaslaw.org
Email: jschulte@nicholaslaw.org

GLICK LAW GROUP, PC
Noam Glick (SBN 251582)
225 Broadway, Suite 2100
San Diego, California 92101
Tel: (619) 382-3400
Fax: (619) 393-0154
Email: noam@gllicklawgroup.com

Attorneys for Plaintiff
Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC., a California organization,

Plaintiff,

v.

JOY CONE CO., a Pennsylvania corporation,
RALPHS GROCERY COMPANY, an Ohio
corporation, RITE AID CORPORATION, a
Delaware corporation, SPROUTS FARMERS
MARKET, INC., a Delaware corporation,
TARGET CORPORATION, a Minnesota
corporation, SMART & FINAL LLC, a
Delaware corporation, WALMART, INC., a
Delaware corporation, DOES 1 through 100,
inclusive,

Defendants.

FILED BY FAX

ALAMEDA COUNTY

October 06, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:

HG20075970

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Plaintiff in the public interest of
3 the citizens of the State of California (“the People”). Plaintiff seeks to remedy Defendants’ failure to
4 inform the People of exposure to acrylamide, a known carcinogen. Defendants expose consumers to
5 acrylamide by manufacturing, importing, selling, and/or distributing Joy Chocolate Dipped Ice Cream
6 Cups, Rite-Aid Thrifty Cake Cups, Three Twin Ice Cream 12 Organic Cake Cones, Market Pantry Ice
7 Cream Cups, Great Value Jumbo Ice Cream Cups, and First Street Cake Cups (“Products”). Defendants
8 know and intend that customers will ingest Products containing acrylamide.

9 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
10 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
11 business shall knowingly and intentionally expose any individual to a chemical known to the state to
12 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
13 individual. . . .” (Health & Safety Code, § 25249.6.)

14 3. California identified and listed acrylamide as a chemical known to cause cancer as early
15 as January 1, 1990, and as a chemical known to cause developmental/reproductive toxicity in February
16 of 2011.

17 4. Defendants failed to sufficiently warn consumers and individuals in California about
18 potential exposure to acrylamide in connection with Defendants’ manufacture, import, sale, or
19 distribution of Products. This is a violation of Proposition 65.

20 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
21 in California before exposing them to acrylamide in Products. (Health & Safety Code, § 25249.7(a).)
22 Plaintiff also seeks civil penalties against Defendants for their violations of Proposition 65 along with
23 attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

II.
PARTIES

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25
26 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“EHA”) is an
27 organization of the State of California dedicated to protecting the health of California citizens through
28

1 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
2 interest pursuant to Health and Safety Code, section 25249.7.

3 7. Defendant JOY CONE CO. (“Joy Cone”), is a corporation organized and existing under
4 the laws of Pennsylvania. Joy Cone is registered to do business in California, and does business in the
5 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Joy Cone
6 manufactures, imports, sells, or distributes the Products in California and Alameda County.

7 8. Defendant RALPHS GROCERY COMPANY (“Ralphs”), is a corporation organized
8 and existing under the laws of Ohio. Ralphs is registered to do business in California, and does business
9 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Ralphs
10 manufactures, imports, sells, or distributes the Products in California and Alameda County.

11 9. Defendant RITE AID CORPORATION (“Rite Aid”), is a corporation organized and
12 existing under the laws of Delaware. Rite Aid is registered to do business in California, and does
13 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
14 Rite Aid manufactures, imports, sells, or distributes the Products in California and Alameda County.

15 10. Defendant SPROUTS FARMERS MARKET, INC. (“Sprouts”), is a corporation
16 organized and existing under the laws of Delaware. Sprouts is registered to do business in California,
17 and does business in the County of Alameda, within the meaning of Health and Safety Code, section
18 25249.11. Sprouts manufactures, imports, sells, or distributes the Products in California and Alameda
19 County.

20 11. Defendant TARGET CORPORATION (“Target”), is a corporation organized and
21 existing under the laws of Minnesota. Target is registered to do business in California, and does business
22 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Target
23 manufactures, imports, sells, or distributes the Products in California and Alameda County.

24 12. Defendant SMART & FINAL LLC (“Smart & Final”), is a corporation organized and
25 existing under the laws of Delaware. Smart & Final is registered to do business in California, and does
26 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
27 Smart & Final manufactures, imports, sells, or distributes the Products in California and Alameda
28 County.

1 13. Defendant WALMART, INC (“Walmart”), is a corporation organized and existing
2 under the laws of Delaware. Walmart is registered to do business in California, and does business in the
3 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Walmart
4 manufactures, imports, sells, or distributes the Products in California and Alameda County.

5 14. Plaintiff does not know the true names and/or capacities, whether individual, partners,
6 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
7 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
8 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and
9 thereon alleges that these defendants are responsible in whole or in part for Plaintiff’s damages.

10 **III.**
11 **VENUE AND JURISDICTION**

12 15. California Constitution Article VI, Section 10 grants the Superior Court original
13 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
14 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
15 has jurisdiction.

16 16. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
17 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
18 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

19 17. Defendants have sufficient minimum contacts in the State of California or otherwise
20 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be
21 consistent with traditional notions of fair play and substantial justice.

22 **IV.**
23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**
25 **(Violation of Proposition 65 – Against all Defendants)**

26 18. Plaintiff incorporates by reference each and every allegation contained above.

27 19. Proposition 65 mandates that citizens be informed about exposures to chemicals that
28 cause cancer, birth defects, and other reproductive harm.

1 20. Defendants manufactured, imported, sold, and/or distributed Products containing
2 acrylamide in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and
3 believes such violations have continued after receipt of the Notices (defined *infra*) and will continue to
4 occur into the future.

5 20. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
6 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
7 to acrylamide through reasonably foreseeable use of the Products.

8 21. Products expose individuals to acrylamide through direct ingestion. This exposure is a
9 natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As
10 such, Defendants intend that consumers will ingest Products, exposing them to acrylamide.

11 22. Defendants knew or should have known that the Products contained acrylamide and
12 exposed individuals to acrylamide in the ways provided above. The Notices informed Defendants of the
13 presence of acrylamide in the Products. Likewise, media coverage concerning acrylamide and related
14 chemicals in consumer products provided constructive notices to Defendants.

15 23. Defendants' actions in this regard were deliberate and not accidental.

16 24. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued 60-
17 Day Notices of Violation ("Notices") as required by and in compliance with Proposition 65. Plaintiff
18 provided the Notices to the various required public enforcement agencies along with a certificate of
19 merit. The Notices alleged that Defendants violated Proposition 65 by failing to sufficiently warn
20 consumers in California of the health hazards associated with exposures to acrylamide contained in the
21 Products.

22 25. The appropriate public enforcement agencies provided with the Notices failed to
23 commence and diligently prosecute a cause of action against Defendants.

24 26. Individuals exposed to acrylamides contained in the Products through direct ingestion
25 resulting from reasonably foreseeable use of the Products have suffered and continue to suffer
26 irreparable harm. There is no other plain, speedy, or adequate remedy at law.

