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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 VICTORIA JAMISON, an individual

14 Plaintiff,

15 v.

16 TARGET CORPORATION, a Delaware
17 corporation; UTZ QUALITY FOODS, LLC, a
18 Delaware limited liability company; DOES 1
19 through 9

20 Defendants.

Case No. 37-2021-00039289-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

21 Plaintiff Victoria Jamison (“Plaintiff”) brings this action in the interests of the general public
22 and, on information and belief, hereby alleges:

23 **INTRODUCTION**

24 1. This action seeks to remedy the continuing failure of defendants to warn individuals
25 in California that they are being exposed to the chemical Furan by their product, Bachman Pretzel
26 Stix (“Product”).

27 2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to
28 know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally
expose individuals in California to chemicals known to the State to cause cancer, birth defects, or
other reproductive harm without providing clear and reasonable warnings to individuals prior to

1 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs.
2 (“CCR”) §§ 25102(n).

3 15. Proposition 65 provides that any “person who violates or threatens to violate” the
4 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.
5 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a
6 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).
7 Violators are liable for visit penalties of up to \$2,500 per day for each violation of the Act. Health
8 & Safety Code § 25249.7.

9 16. On October, 1, 1993, almost 28 years ago, the State of California officially listed
10 the chemical Furan as a chemical known to cause cancer. Furan became subject to the warning
11 requirement one year later and was therefore subject to the “clear and reasonable” warning
12 requirements of Proposition 65 beginning on October 1, 1994. Health & Safety Code § 25249.6 *et*
13 *seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.* Due to the carcinogenicity of Furan, there is no safe
14 harbor levels. 27 Cal. Code Regs. § 25705(b)(1).

15 **FACTUAL BACKGROUND**

16 17. To test Defendants’ Products for Furan, Plaintiff hired a well-
17 respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of the
18 Products were positive for Furan and therefore in violation of the Proposition 65’s regulations.

19 18. Based on testing results, on June 18, 2021 Plaintiff sent a 60-Day Notice of
20 Proposition 65 Violations (“Notice”) to defendants regarding the Product.

21 19. On the same day they were sent to Defendants, each Notice was also sent to the
22 requisite public enforcement agencies.

23 20. The Notice described above was issued pursuant to, and in compliance with, the
24 requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing regulations
25 regarding the notice of the violations to be given to certain public enforcement agencies and to the
26 violators. The Notice included, *inter alia*, the following information: the name, address, and
27 telephone number of the noticing individuals; the name of the alleged violator; the statute violated;
28 the approximate time period during which violations occurred; and descriptions of the violations,

1 including the chemical involved, the routes of toxic exposure, and the specific product or type of
2 product causing the violations, and was issued as follows:

- 3 a. The relevant Defendants were provided a copy of the Notice by U.S. Mail.
- 4 b. The relevant Defendants were provided a copy of the document entitled “The
5 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
6 Summary,” which is also known as Appendix A to Title 27 of Cal. Code Regs §
7 25903.
- 8 c. The California Attorney General was provided a copy of the Notice via online
9 submission.
- 10 d. The California Attorney General was provided with a Certificate of Merit by
11 the attorney for the noticing party, stating that there is a reasonable and
12 meritorious case for this action, and attaching factual information sufficient to
13 establish a basis for the certificate, including the identity of the persons
14 consulted with and relied on by the certified, and the facts, studies, or other data
15 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 16 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
17 which the Product is offered for sale within California were provided with a
18 copy of the Notice pursuant to Health & Safety Code § 25249.7(d)(1).

19 21. At least 60-days have elapsed since Plaintiff sent the Notice to Defendants.

20 The appropriate public enforcement agencies have failed to commence and diligently prosecute a
21 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendant based on the
22 allegations herein.

23 22. On information and belief, the Products have been manufactured,
24 distributed, and/or sold by Defendants for consumption in California. On information and belief,
25 the Product continues to be distributed and sold in California without the requisite warning
26 information.

27 23. At all times relevant to this action, Defendants have knowingly and intentionally
28 exposed the users of the Products to Furan without first giving a clear and reasonable warning to

1 Defendants to identify and locate each individual who has purchased the Product and to provide a
2 warning to such persons that consumption of the Product will expose the consumers to a chemical
3 known to cause cancer.

4 3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)
5 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

6 4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to
7 California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the
8 Court; and,

9 5. Such other and further relief as may be just and proper.

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DATED: September 15, 2021

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