1 2 3 4 5 6	George Rikos, Esq. (SBN 204864) LAW OFFICES OF GEORGE RIKOS 555 West Beech Street, Suite 500 San Diego, CA 92101 Telephone: (858) 342-9161 Facsimile: (858) 724-1453 Email: george@georgerikoslaw.com Attorneys for Plaintiff, Victoria Jamison	ELECTRONICALLY FILED Superior Court of California, County of San Diego 09/15/2021 at 10:03:42 AM Clerk of the Superior Court By Jose Hernandez, Deputy Clerk
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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF SAN DIEGO	
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11	VICTORIA JAMISON, an individual	Case No. 37-2021-00039269-CU-MC-CTL
12	Plaintiff,	COMPLAINT FOR INJUNCTIVE
13	V.	RELIEF AND CIVIL PENALTIES
14	TARGET CORPORATION, a Delaware corporation; UTZ QUALITY FOODS, LLC, a	
15	Delaware limited liability company; DOES 1 through 9	
16	Defendants.	
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19	Plaintiff Victoria Jamison ("Plaintiff") brings this action in the interests of the general public	
20	and, on information and belief, hereby alleges:	
21	<u>INTRODUCTION</u>	
22	1. This action seeks to remedy the continuing failure of defendants to warn individuals	
23	in California that they are being exposed to the chemical Furan by their product, Bachman Pretzel	
24	Stix ("Product").	
25	2. California's Proposition 65 (Health & Safety Code § 25249.5, <i>et seq.</i>), is a right to	
26	know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally	
27	expose individuals in California to chemicals known to the State to cause cancer, birth defects, or	
28	other reproductive harm without providing clear and reasonable warnings to individuals prior to COMPLAINT	

- 3. When consumers purchase and eat the Product, they are exposed to Furan without a "clear and reasonable warning" under Proposition 65. Yet Defendant has failed to provide any warning to consumers that they are being exposed to the carcinogenic chemical Furan.
- 4. Defendants past and continued manufacturing, distribution, and sale of the Product in California, without a clear and reasonable warning, causes individuals to be involuntarily and unwittingly exposed to Furan in violation of Proposition 65.
- 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued manufacturing, distribution, and/or sales of the Products in California without providing clear and reasonable warnings regarding the risks of cancer posed by exposure to Furan through consumption of the Products. Plaintiff sees an injunctive order compelling Defendants to bring their business practices into compliance with Proposition 65 by providing a clear and reasonable warning to each individual who has been and who in the future may be exposed to Furan from consumption of the Products. Plaintiff also seeks an order compelling Defendants to identify and locate each individual person who in the past has purchased the Product, and to provide to each such purchaser a clear and reasonable warning that use of the Product will cause exposures to Furan.

JURISDICTION AND VENUE

- 6. This Court has jurisdiction over this action pursuant to Health and Safety Code § 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and pursuant to California Constitution Article VII, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The causes of actions alleged herein are not given by statute to other trial courts.
- 7. This Court has jurisdiction over Defendants because Defendants are a business having sufficient minimum contacts with California, or otherwise intentionally availing themselves of the California market through the distribution and sale of the Products in the State of California to render the exercise of jurisdiction over this defendant by the California courts consistent with traditional notions of fair play land substantial justice.

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

- 15. Proposition 65 provides that any "person who violates or threatens to violate" the statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7. The phrase "threaten to violate" is defined to mean creating "a condition in which there is a substantial probability that a violation will occur." Health & Safety Code § 25249.11(e). Violators are liable for visit penalties of up to \$2,500 per day for each violation of the Act. Health & Safety Code § 25249.7.
- 16. On October, 1, 1993, almost 28 years ago, the State of California officially listed the chemical Furan as a chemical known to cause cancer. Furan became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable" warning requirements of Proposition 65 beginning on October 1, 1994. Health & Safety Code § 25249.6 et seq.; 27 Cal. Code Regs. §§ 25000, et seq. Due to the carcinogenicity of Furan, there is no safe harbor levels. 27 Cal. Code Regs. § 25705(b)(1).

FACTUAL BACKGROUND

- 17. To test Defendants' Products for Furan, Plaintiff hired a well-respected and accredited testing laboratory. The results of testing undertaken by Plaintiff of the Products were positive for Furan and therefore in violation of the Proposition 65's regulations.
- 18. Based on testing results, on June 18, 2021 Plaintiff sent a 60-Day Notice of Proposition 65 Violations ("Notice") to defendants regarding the Product.
- 19. On the same day they were sent to Defendants, each Notice was also sent to the requisite public enforcement agencies.
- 20. The Notice described above was issued pursuant to, and in compliance with, the requirements of Health & Safety Code § 25249.7(d) and the statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violators. The Notice included, *inter alia*, the following information: the name, address, and telephone number of the noticing individuals; the name of the alleged violator; the statue violated; the approximate time period during which violations occurred; and descriptions of the violations,

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

- a. The relevant Defendants were provided a copy of the Notice by U.S. Mail.
- b. The relevant Defendants were provided a copy of the document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of Cal. Code Regs § 25903.
- c. The California Attorney General was provided a copy of the Notice via online submission.
- d. The California Attorney General was provided with a Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case for this action, and attaching factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted with and relied on by the certified, and the facts, studies, or other data reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- e. The district attorneys, city attorneys or prosecutors of each jurisdiction within which the Product is offered for sale within California were provided with a copy of the Notice pursuant to Health & Safety Code § 25249.7(d)(1).
- 21. At least 60-days have elapsed since Plaintiff sent the Notice to Defendants. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendant based on the allegations herein.
- 22. On information and belief, the Products have been manufactured, distributed, and/or sold by Defendants for consumption in California. On information and belief, the Product continues to be distributed and sold in California without the requisite warning information.
- 23. At all times relevant to this action, Defendants have knowingly and intentionally exposed the users of the Products to Furan without first giving a clear and reasonable warning to

such individuals.

24. As a proximate result of acts of Defendants as persons in the course of doing business within the meaning of Health & Safety Code § 25249.11, individuals throughout the State of California, including the County of San Diego, have been exposed to Furan without a clear and reasonable warning. The individuals subject to the illegal exposures include normal and foreseeable users of the Products, as well as all other persons exposed to the Products.

FIRST CAUSE OF ACTION
(Violations of Health and Safety Code § 25249.5, et seq.)

- 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24, inclusive, as if specifically set forth herein.
- 26. Defendants are a person doing business within the meaning of Health & Safety Code § 25249.11.
 - 27. Furan is listed on the State of California as a chemical known to cause cancer.
- 28. Defendants have and continues to knowingly and intentionally expose individuals who ingest the Products to the chemical Furan without first providing a clear and reasonable warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and 25249.11(f).
- 29. Continuing commission by Defendants of the acts alleged above will irreparably harm the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

- 1. A preliminary and permanent injunction, pursuant to Health & Safety Code § 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from distributing or selling the Products in California without first providing a clear and reasonable warning that consumers of the Products are exposed to Furan;
 - 2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling

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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11	DATED: September 15, 2021 LAW OFFICES OF GEORGE RIKOS	
12	George Rikos	
13	George Rikos	
14	Attorney for Plaintiff Victoria Jamison	
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