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14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF ALAMEDA**

17 ENVIRONMENTAL HEALTH ADVOCATES,
18 INC.,

19 Plaintiff,

20 v.

21 THE KROGER CO., an Ohio corporation;
22 RALPH'S GROCERY COMPANY, an Ohio
23 corporation, and DOES 1 through 100,
24 inclusive,

25 Defendants.

Case No.: **23CV031618**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

04/20/2023 at 12:57:28 PM

By: Angela Linhares,
Deputy Clerk

I.
INTRODUCTION

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2 1. This Complaint is a representative action brought by Environmental Health Advocates,
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendants’ failure to inform the People of exposure to benzophenone, a known
5 carcinogen. Defendants expose consumers to benzophenone by manufacturing, importing, selling,
6 and/or distributing sunscreen products including, but not limited to, Kroger Kids Sunscreen spray, SPF
7 50 (“Products”). Defendants know and intend that customers will use Products containing
8 benzophenone.

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 benzophenone as a chemical known to cause cancer as
15 early as June 22, 2012.

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

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

II.
PARTIES

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24
25 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
26 corporation in the State of California dedicated to protecting the health of California citizens through
27 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
28 interest pursuant to Health and Safety Code, section 25249.7.

1 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
2 California of the health hazards associated with exposures to benzophenone contained in the Products.

3 22. The appropriate public enforcement agencies provided with the Notice failed to
4 commence and diligently prosecute a cause of action against Defendants.

5 23. Individuals exposed to benzophenone contained in Products through dermal absorption
6 resulting from reasonably foreseeable use of the Products have suffered and continue to suffer
7 irreparable harm. There is no other plain, speedy, or adequate remedy at law.

8 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
9 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
10 appropriate pursuant to Health and Safety Code, section 25249.7(a).

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

3 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
4 damages total a minimum of \$1,000,000.00;

5 2. A preliminary and permanent injunction against Defendants from manufacturing,
6 importing, selling, and/or distributing Products in California without providing a clear and reasonable
7 warning as required by Proposition 65 and related Regulations;

8 3. Reasonable attorney’s fees and costs of suit; and

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

10
11 Respectfully submitted:

12 Dated: April 20, 2023

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13
14
15 By: 
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