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5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

6 **IN AND FOR THE COUNTY OF ALAMEDA**

7 ENVIRONMENTAL HEALTH ADVOCATES,
8 INC.,

9 Plaintiff,

0 v.

1 PERIO, INC., an Ohio corporation;
2 AMAZON.COM, INC., a Delaware corporation;
3 C.O. BIGELOW CHEMISTS, INC., a New York
4 corporation; ELEMIS USA, INC., a Florida
5 corporation; THE GILLETTE COMPANY LLC, a
6 Delaware limited liability company; GROCERY
7 OUTLET INC., a California corporation; THE
8 PROCTER & GAMBLE COMPANY, an Ohio
9 corporation; CVS PHARMACY, INC., a Rhode
0 Island corporation; WALGREEN CO., an Illinois
1 corporation; TARGET CORPORATION, a
2 Minnesota corporation; NAME RITE, LLC, a
3 Delaware limited liability company; JOHNSON &
4 JOHNSON CONSUMER INC., a Delaware
5 corporation; EDGEWELL PERSONAL CARE
6 BRANDS, LLC, a Delaware limited liability
7 company; BIG LOTS STORES, LLC, an Ohio
8 limited liability company; FRUIT OF THE EARTH,
9 INC., a Delaware corporation; and DOES 1 through
0 100, inclusive,

1 Defendants.

Case No.: **24CV095397**

**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 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 diethanolamine ("DEA"), a
5 chemical known to the State of California to cause cancer. DEA is a common component of cosmetic
6 and grooming products, and often functions as an emulsifier or foaming agent. Defendants expose
7 consumers to DEA by manufacturing, importing, selling, and/or distributing a variety of shaving
8 products including, but not limited to shaving gels, shaving creams, and after shaves (collectively, the
9 “Products.”) Defendants know and intend that customers will use Products containing DEA.

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

15 3. On or around June 22, 2012, the State of California added DEA to Proposition 65 as a
16 known carcinogen, thereby requiring a clear and reasonable warning about potential exposure to DEA
17 on affected consumer goods. Despite this, Defendants failed to sufficiently warn consumers and
18 individuals in California about potential exposure to DEA in connection with Defendants' manufacture,
19 import, sale, or distribution of Products. This is a violation of Proposition 65.

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

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**II.
PARTIES**

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2 5. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
3 corporation in the State of California dedicated to protecting the health of California citizens through
4 the elimination or reduction of toxic exposure from consumer products. Plaintiff has prosecuted a
5 number of Proposition 65 cases in the public interest. These cases have resulted in significant public
6 benefit—including the reformulation and repackaging of numerous consumer products—to make them
7 safer for California consumers, and to properly apprise California consumers of any health risks
8 associated with their usage. Plaintiff brings this action in the public interest pursuant to Health and
9 Safety Code, section 25249.7.

10 6. Defendant PERIO, INC. (“Perio”) is a corporation organized and existing under the
11 laws of Ohio. Perio is registered to do business in California, and does business in the County of
12 Alameda, within the meaning of Health and Safety Code, section 25249.11. Perio manufactures,
13 imports, sells, or distributes the Products in California and Alameda County.

14 7. Defendant AMAZON.COM, INC. (“Amazon”) is a corporation organized and existing
15 under the laws of Delaware. Amazon is registered to do business in California, and does business in the
16 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Amazon
17 manufactures, imports, sells, or distributes the Products in California and Alameda County.

18 8. Defendant C.O. BIGELOW CHEMISTS, INC. (“Bigelow”) is a corporation organized
19 and existing under the laws of New York. Bigelow is registered to do business in California, and does
20 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
21 Bigelow manufactures, imports, sells, or distributes the Products in California and Alameda County.

22 9. Defendant ELEMIS USA, INC. (“Elemis”) is a corporation organized and existing
23 under the laws of Florida. Elemis is registered to do business in California, and does business in the
24 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Elemis
25 manufactures, imports, sells, or distributes the Products in California and Alameda County.

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1 10. Defendant THE GILLETTE COMPANY LLC (“Gillette”) is a limited liability
2 company organized and existing under the laws of Delaware. Gillette is registered to do business in
3 California, and does business in the County of Alameda, within the meaning of Health and Safety Code,
4 section 25249.11. Gillette manufactures, imports, sells, or distributes the Products in California and
5 Alameda County.

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

10 12. Defendant THE PROCTER & GAMBLE COMPANY (“P & G”) is a corporation
11 organized and existing under the laws of Ohio. P & G is registered to do business in California, and
12 does business in the County of Alameda, within the meaning of Health and Safety Code, section
13 25249.11. P & G manufactures, imports, sells, or distributes the Products in California and Alameda
14 County.

15 13. Defendant CVS PHARMACY, INC. (“CVS”) is a corporation organized and existing
16 under the laws of Rhode Island. CVS is registered to do business in California, and does business in
17 the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. CVS
18 manufactures, imports, sells, or distributes the Products in California and Alameda County.

19 14. Defendant WALGREEN CO. (“Walgreen”) is a corporation organized and existing
20 under the laws of Illinois. Walgreen is registered to do business in California, and does business in the
21 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Walgreen
22 manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

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1 16. Defendant NAME RITE, LLC (“Name Rite”) is a limited liability company organized
2 and existing under the laws of Delaware. Name Rite is registered to do business in California, and does
3 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
4 Name Rite manufactures, imports, sells, or distributes the Products in California and Alameda County.

5 17. Defendant JOHNSON & JOHNSON CONSUMER INC. (“J & J”) is a corporation
6 organized and existing under the laws of Delaware. J & J is registered to do business in California, and
7 does business in the County of Alameda, within the meaning of Health and Safety Code, section
8 25249.11. J & J manufactures, imports, sells, or distributes the Products in California and Alameda
9 County.

10 18. Defendant EDGEWELL PERSONAL CARE BRANDS, LLC (“Edgewell”) is a limited
11 liability company organized and existing under the laws of Delaware. Edgewell is registered to do
12 business in California, and does business in the County of Alameda, within the meaning of Health and
13 Safety Code, section 25249.11. Edgewell manufactures, imports, sells, or distributes the Products in
14 California and Alameda County.

15 19. Defendant BIG LOTS STORES, LLC (“Big Lots”) is a limited liability company
16 organized and existing under the laws of Ohio. Big Lots is registered to do business in California, and
17 does business in the County of Alameda, within the meaning of Health and Safety Code, section
18 25249.11. Big Lots manufactures, imports, sells, or distributes the Products in California and Alameda
19 County.

20 20. Defendant FRUIT OF THE EARTH, INC. (“FOTE”) is a corporation organized and
21 existing under the laws of Delaware. FOTE 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. FOTE
23 manufactures, imports, sells, or distributes the Products in California and Alameda County.

24 21. Plaintiff does not know the true names and/or capacities, whether individual, partners,
25 or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
26 said Defendants under fictitious names pursuant to Cal. Civ. Proc. § 474. Plaintiff will seek leave to
27 amend this Complaint when the true names and capacities of these Defendants have been ascertained.
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1 28. On June 22, 2012, the State of California formally identified and listed DEA as a
2 chemical known to cause cancer. DEA is a common component of cosmetic and grooming products,
3 and often functions as an emulsifier or foaming agent.

4 29. In 2012, the International Agency for Research on Cancer (“IARC”) also formally
5 identified DEA as a Group 2B possible human carcinogen. (*See* IARC Working Group on the Evaluation
6 of Carcinogenic Risks to Humans, Some Chemicals Present in Industrial and Consumer Products, Food
7 and Drinking-Water. Lyon (FR): International Agency for Research on Cancer; 2013, (IARC
8 Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 101.)
9 DIETHANOLAMINE, available at: <https://www.ncbi.nlm.nih.gov/books/NBK373177/> [last visited
10 October 9, 2024].)

11 30. Animal studies have reported effects on various organ systems from long-term topical
12 administration of DEA. For example, a study conducted by the National Toxicology Program
13 (hereinafter, the “NTP study”) showed that dermal exposure to DEA amplified the development of
14 tumors in the liver and kidney tubules. (*See* National Toxicology Program, NTP Toxicology and
15 Carcinogenesis Studies of Diethanolamine (CAS No. 111-42-2) in F344/N Rats and B6C3F1 Mice
16 (Dermal Studies). Natl Toxicol Program Tech Rep Ser. 1999 Jul; 478:1-212. PMID: 12571685.,
17 available at: <https://pubmed.ncbi.nlm.nih.gov/12571685/> [last visited October 9, 2024].)

18 31. The Office of Environmental Health Hazard Assessment (“OEHHA”) has established
19 specific safe harbor levels for many of the chemicals listed under Proposition 65. For cancer-causing
20 chemicals in particular, a safe harbor level is called a “No Significant Risk Level,” or “NSRL.” An
21 NSRL is the daily intake level calculated to result in one excess cancer in an exposed human population
22 of 100,000, assuming lifetime exposure at the level in question. (*See* OEHHA’s Proposition 65 Process
23 for Developing Safe Harbor Numbers (February 2001), available at
24 <https://oehha.ca.gov/media/downloads/cmr/2001safeharborprocess.pdf> [last visited October 9, 2024].)
25 The State of California has not yet established an NSRL for DEA. However, research suggests that an
26 NSRL of 5.6 micrograms/day of DEA is appropriate, where dermal absorption is the route of exposure.
27 (*See* Wang B, Amacher DE, Whittaker MH. Derivation of a No-Significant-Risk-Level (NSRL) for
28 diethanolamine (DEA). Regul Toxicol Pharmacol. 2014 Feb; 68(1):76-84. doi:

1 10.1016/j.yrtph.2013.11.009. Epub 2013 Nov 23. PMID: 24275050. [last visited October 9, 2024].)

2 This NSRL is derived from the NTP study described above, using a benchmark dose modeling method
3 based on the incidence of hepatocellular carcinomas in female mice, in accordance with the guidelines
4 of the California Environmental Protection Agency.

5 32. In order to ensure that the injunctive relief sought herein confers a public benefit upon
6 California consumers, Plaintiff adopts the NSRL of 5.6 micrograms/day for DEA derived from the NTP
7 study.

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 – Against all Defendants)**

11 33. Plaintiff incorporates by reference each and every allegation contained above.

12 34. Proposition 65 mandates that citizens be informed about exposures to chemicals that
13 cause cancer, birth defects, and other reproductive harm.

14 35. Defendants manufactured, imported, sold, and/or distributed Products containing DEA
15 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
16 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
17 future.

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

21 37. Products expose individuals to DEA through dermal absorption. This exposure is a
22 natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As
23 such, Defendants intend that consumers will use Products, exposing them to DEA.

24 38. Defendant's Products exceed the NSRL of 5.6 micrograms/day, which was derived from
25 the NTP study.

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1 39. Defendants knew or should have known that the Products contained DEA and exposed
2 individuals to DEA in the ways provided above. The Notice informed Defendants of the presence of
3 DEA in the Products. Likewise, media coverage concerning DEA and related chemicals in consumer
4 products provided constructive notice to Defendants.

5 40. Defendants' actions in this regard were deliberate and not accidental.

6 41. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
7 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
8 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
9 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
10 California of the health hazards associated with exposures to DEA contained in the Products.

11 42. The appropriate public enforcement agencies provided with the Notice failed to
12 commence and diligently prosecute a cause of action against Defendants.

13 43. Individuals exposed to DEA contained in Products through dermal absorption resulting
14 from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm.
15 There is no other plain, speedy, or adequate remedy at law.

16 44. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
17 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
18 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;
- 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: October 11, 2024

ENTORNO LAW, LLP

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14 By: 
Noam Glick

15 Craig M. Nicholas
16 Jake W. Schulte
17 Janani Natarajan

18 Attorneys for Plaintiff
19 Environmental Health Advocates, Inc.

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