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10 Attorneys for Plaintiff,
11 COUNCIL FOR EDUCATION AND
12 RESEARCH ON TOXICS ("CERT")

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

15 COUNCIL FOR EDUCATION AND
16 RESEARCH ON TOXICS, a California
17 public benefit corporation;

18 Plaintiff,

19 vs.

20 ACE HARDWARE CORPORATION;
21 AMAZON.COM SERVICES LLC; BED
22 BATH & BEYOND INC.; BEST BUY CO.,
23 INC.; BEST CHOICE PRODUCTS, INC.;
24 BIG BOSS; BONSEN ELECTRONICS,
25 INC.; BREVILLE USA, INC.; COSMO
26 PRODUCTS, LLC; COSORI
27 CORPORATION; COSTCO WHOLESALE
28 CORPORATION; COSTWAY.COM, INC.;
COSTZON INC.; CUISINARTS, INC.;
EMERALD ELECTRONICS USA, INC.;
ESLITE CORPORATION; EVERUS
INCORPORATED; FARBERWARE, INC.;
FOOD 4 LESS OF SOUTHERN
CALIFORNIA, INC.; GOTHAM STEEL;
GOURMIA CORPORATION; GOWISE
USA LLC; HAMILTON BEACH
BRANDS, INC.; HANGZHOU NIJIA
NETWORK TECHNOLOGY CO. LTD.;
HAUSWIRT APPLIANCE PTE, LTD.;
HAVELLS USA, INC.; HOLSEM
BRANDS, LLC; HOMEEASY
INDUSTRIAL CO., LTD.; HOMELABS
LLC; HOME DEPOT U.S.A., INC.;
HUNANBOYUAN HAOCHEN TRADING
CO., LTD.; ICUCINA GMBH & CO. KG;
IGNITED, LLC; INSTANT BRANDS,
INC.; JIASHENG XU; J. C. PENNEY
COMPANY, INC.; JIMO TECHNOLOGY

CASE NO. 21STCV39713

**COMPLAINT FOR VIOLATIONS OF
THE SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65) [CALIFORNIA
HEALTH & SAFETY CODE § 25249.6]**

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CO., LTD.; KALORIK USA; KOHL'S
INC.; KRUPS, LLC; LOWE'S
COMPANIES, INC.; MACY'S, INC.;
MIDEA AMERICA CORP.; NEWELL
BRANDS, INC.; NUWAVE, LLC; PHILIPS
NORTH AMERICA LLC; PICK FIVE
IMPORTS, INC.; RALPHS GROCERY
COMPANY; RJ BRANDS LLC; RYLAND
HOUSE; SECURA INC.; SENSIO INC.;
SEQUENTIAL BRANDS GROUP, INC.;
SHARKNINJA OPERATING LLC;
SHENZHEN DAITIANXIA E-
COMMERCE CO., LTD.; SHENZHEN
PROSCENIC TECHNOLOGY CO., LTD.;
SHENZHEN WOMEI TECH CO., LTD.;
SICTEC INSTRUMENTS CO. LTD.;
SKYLINE BRANDS, INC.;
STOREBOUND HOLDING, LLC;
SUBSTANBO INNOVATIONS
TECHNOLOGY LIMITED;
SUNVALLEYTEK INTERNATIONAL,
INC.; TARGET CORPORATION;
TOPNET, INC.; TOSHIBA LIFESTYLE
PRODUCTS & SERVICES
CORPORATION; TRISTAR PRODUCTS,
INC.; TTK PRESTIGE LIMITED;
ULTREAN, INC.; WALMART INC.;
WAYFAIR, INC.; WENZHOU CITY
LEKA E-COMMERCE CO., LTD.;
WHIRLPOOL CORPORATION;
WILLIAMS-SONOMA, INC.; ZHUHAI
QIYIJIE ELECTRONIC COMMERCE CO.
LTD.; and DOES 1 through 100, inclusive,

Defendants.

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1 Plaintiff, Council for Education and Research on Toxics, a California public benefit
2 corporation, hereby alleges:

3 **PARTIES**

4 **Plaintiff**

5
6 1. Plaintiff, Council for Education and Research on Toxics ("CERT"), is a
7 California public benefit corporation which at all material times hereto has had its principal office
8 within the County of Los Angeles.

9 2. CERT brings this action as a private attorney general in the public interest
10 pursuant to Cal. Health and Safety Code § 25249.7.

11 3. CERT's charitable purposes are education and research regarding toxic
12 substances. Throughout its history CERT has funded research and education regarding toxic
13 substances, especially carcinogens in food, primarily funding education and research grants to the
14 University of California researchers and students and nonprofit organizations such as the Green
15 Science Policy Institute.

16 4. CERT has long been at the forefront of protecting California consumers from
17 the carcinogenic hazard of acrylamide in the human diet. CERT filed the first case to enforce
18 Proposition 65 regarding acrylamide in french fries in 2002 - the very year that the carcinogen and
19 neurotoxin known as acrylamide was first reported to be present in cooked foods. CERT co-litigated
20 the next case regarding acrylamide in potato chips with the California Attorney General. Those
21 cases were both successful and conferred substantial benefits to California consumers. In the former
22 case, french fry manufacturers agreed to provide legally required cancer hazard warnings and in the
23 latter case, potato chip manufacturers reduced acrylamide levels in potato chips in lieu of warning,
24 which is, of course, the best result for public health.

25 5. Since 2010 CERT has been litigating a case against the coffee industry
26 regarding acrylamide in coffee (*CERT v. Starbucks, et al.*, Los Angeles Superior Court Case No. BC
27 435759), with the goal of persuading companies that produce coffee (i.e. coffee roasters) to reduce
28 acrylamide levels in coffee, which is the largest source of acrylamide in the adult diet.

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Defendants

6. The Defendants in this case are all manufacturers, distributors, or retailers of products called “air fryers” that have been sold in California, including within Los Angeles County.

7. Defendant, ACE HARDWARE CORPORATION, is a Delaware corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold multiple brands of air fryers.

8. Defendant, AMAZON.COM SERVICES LLC, is a Delaware limited liability company, which has, at all material times hereto, been doing business in the County of Los Angeles, and, as the largest e-commerce retailer in the United States, has sold multiple brands of air fryers.

9. Defendant, BED BATH & BEYOND INC., is a New York corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and is a retailer that has sold multiple brands of air fryers.

10. Defendant, BEST BUY CO., INC., is a Minnesota corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and is a retailer that has sold multiple brands of air fryers.

11. Defendant, BEST CHOICE PRODUCTS, INC., is a California corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold Best Choice brand air fryers.

12. Defendant, BIG BOSS, is a corporation located in New York, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold Big Boss brand air fryers.

13. Defendant, BONSEN ELECTRONICS, INC., is a Georgia corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold Bosen brand air fryers.

14. Defendant, BREVILLE USA, INC., is a California corporation, which has, at all material times hereto, been doing business in the County of Los Angeles.

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1 15. Defendant, COSMO PRODUCTS, LLC, is a California Limited Liability
2 Company, which has, at all material times hereto, been doing business in the County of Los Angeles,
3 and has sold Cosmo brand air fryers.

4 16. Defendant, COSORI CORPORATION, is a California corporation, which has,
5 at all material times hereto, been doing business in the County of Los Angeles, and has sold Cosori
6 brand air fryers.

7 17. Defendant, COSTCO WHOLESALE CORPORATION, is a Washington
8 corporation, which has, at all material times hereto, been doing business in the County of Los
9 Angeles, and is a retailer that has sold multiple brands of air fryers.

10 18. Defendant, COSTWAY.COM, INC., is a California corporation, which has,
11 at all material times hereto, been doing business in the County of Los Angeles, and has sold Costway
12 brand air fryers.

13 19. Defendant, COSTZON INC., is a California corporation, which has, at all
14 material times hereto, been doing business in the County of Los Angeles, and has sold Costzon brand
15 air fryers.

16 20. Defendant, CUISINARTS, INC., is a Delaware corporation, which has, at all
17 material times hereto, been doing business in the County of Los Angeles, and has sold Cuisinart
18 brand air fryers.

19 21. Defendant, EMERALD ELECTRONICS USA, INC., is a New Jersey
20 corporation, which has, at all material times hereto, been doing business in the County of Los
21 Angeles, and has sold Emerald brand air fryers.

22 22. Defendant, ESLITE CORPORATION, is a Taiwanese corporation, located
23 in Taipei, Taiwan, which has, at all material times hereto, been doing business in the County of Los
24 Angeles, and has sold Eslite brand air fryers.

25 23. Defendant, EVERUS INCORPORATED, is a California, corporation, which
26 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold
27 Everus brand air fryers.

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1 24. Defendant, FARBERWARE, INC., is a Delaware corporation, which has, at
2 all material times hereto, been doing business in the County of Los Angeles, and has sold Farberware
3 brand air fryers.

4 25. Defendant, FOOD 4 LESS OF SOUTHERN CALIFORNIA, INC., is a
5 Delaware corporation, which has, at all material times hereto, been doing business in the County of
6 Los Angeles, and is a retailer that has sold multiple brands of air fryers.

7 26. Defendant, GOTHAM STEEL, is a foreign corporation, which has, at all
8 material times hereto, been doing business in the County of Los Angeles, and has sold Gotham Steel
9 brand air fryers.

10 27. Defendant, GOURMIA CORPORATION, is a foreign corporation, which has,
11 at all material times hereto, been doing business in the County of Los Angeles, and has sold Gourmia
12 brand air fryers.

13 28. Defendant, GOWISE USA LLC, is an Arizona limited liability company,
14 which has, at all material times hereto, been doing business in the County of Los Angeles, and has
15 sold GoWise brand air fryers.

16 29. Defendant, HAMILTON BEACH BRANDS, INC., is a Virginia corporation,
17 which has, at all material times hereto, been doing business in the County of Los Angeles, and has
18 sold Hamilton Breach brand air fryers.

19 30. Defendant, HANGZHOU NIJIA NETWORK TECHNOLOGY CO. LTD.,
20 is a Chinese company located in ZheJiang China, which has, at all material times hereto, been doing
21 business in the County of Los Angeles, and has sold, inter alia, Caynel brand air fryers.

22 31. Defendant, HAUSWIRT APPLICANCE PTE, LTD., is a company located
23 in Singapore, which has, at all material times hereto, been doing business in the County of Los
24 Angeles, and has sold Hauswirt brand air fryers.

25 32. Defendant, HAVELLS USA, INC., is a Delaware corporation, which has, at
26 all material times hereto, been doing business in the County of Los Angeles, and has sold Havells
27 brand air fryers.

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1 33. Defendant, HOLSEM BRANDS, LLC, is a California Limited Liability
2 Company, which has, at all material times hereto, been doing business in the County of Los Angeles,
3 and has sold Holsem brand air fryers.

4 34. Defendant, HOMEEASY INDUSTRIAL CO., LTD., is a Chinese company
5 located in Foshan City, China, which has, at all material times hereto, been doing business in the
6 County of Los Angeles, and has sold Geek brand air fryers.

7 35. Defendant, HOMELABS LLC, is a Delaware limited liability company, which
8 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold
9 Homelabs brand air fryers.

10 36. Defendant, HOME DEPOT U.S.A., INC., is a Delaware corporation, which
11 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold
12 multiple brands of air fryers.

13 37. Defendant, HUNAN BOYUAN HAOCHEN TRADING CO., LTD., is a
14 Chinese company located in Hunan, China, which has, at all material times hereto, been doing
15 business in the County of Los Angeles, and has sold Iconites brand air fryers.

16 38. Defendant, ICUCINA GMBH & CO. KG, is a German company, which has,
17 at all material times hereto, been doing business in the County of Los Angeles, and has sold iCucina
18 brand air fryers.

19 39. Defendant, IGNITED, LLC, is a Delaware Limited Liability Company, which
20 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold
21 Ignited brand air fryers.

22 40. Defendant, INSTANT BRANDS, INC., is a Canadian company, which has,
23 at all material times hereto, been doing business in the County of Los Angeles, and has sold various
24 brands of air fryers, including, but not limited to Instant and Vortex brand air fryers.

25 41. Defendant, JIASHENG XU, is a Chinese company, which has, at all material
26 times hereto, been doing business in the County of Los Angeles, and has sold, inter alia, Besile brand
27 air fryers.

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1 42. Defendant, J. C. PENNEY COMPANY, INC., is a Delaware corporation,
2 which has, at all material times hereto, been doing business in the County of Los Angeles, and is a
3 retailer that has sold multiple brands of air fryers.

4 43. Defendant, JIMO TECHNOLOGY CO., LTD., is a Colorado corporation,
5 which has, at all material times hereto, been doing business in the County of Los Angeles, and has
6 sold Rozmoz brand air fryers.

7 44. Defendant, KALORIK USA, is a foreign corporation, which has, at all
8 material times hereto, been doing business in the County of Los Angeles, and has sold Kalorik brand
9 air fryers.

10 45. Defendant, KOHL'S INC., is a Delaware corporation, which has, at all
11 material times hereto, been doing business in the County of Los Angeles, and is a retailer that has
12 sold multiple brands of air fryers.

13 46. Defendant, KRUPS, LLC, is a Delaware Limited Liability Company, which
14 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold
15 Krups brand air fryers.

16 47. Defendant, LOWE'S COMPANIES, INC., is a North Carolina corporation,
17 which has, at all material times hereto, been doing business in the County of Los Angeles and is a
18 retailer that has sold multiple brands of air fryers.

19 48. Defendant, MACY'S, INC., is a Delaware corporation, which has, at all
20 material times hereto, been doing business in the County of Los Angeles, and is a retailer that has
21 sold multiple brands of air fryers.

22 49. Defendant, MIDEA AMERICA CORP., is a New Jersey corporation, which
23 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold,
24 inter alia, Comfee' brand air fryers.

25 50. Defendant, NEWELL BRANDS, INC., is a Delaware corporation, which has,
26 at all material times hereto, been doing business in the County of Los Angeles, and has sold, inter
27 alia, Oster brand air fryers.

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1 51. Defendant, NUWAVE, LLC, is a Delaware Limited Liability Company, which
2 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold
3 NuWave brand air fryers.

4 52. Defendant, PHILIPS NORTH AMERICA LLC, is a Delaware limited liability
5 company, which has, at all material times hereto, been doing business in the County of Los Angeles,
6 and has sold Philips brand air fryers.

7 53. Defendant, PICK FIVE IMPORTS, INC., is a California corporation, which
8 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold,
9 inter alia, Elite Gourmet brand air fryers.

10 54. Defendant, RALPHS GROCERY COMPANY, is an Ohio corporation, which
11 has, at all material times hereto, been doing business in the County of Los Angeles, and has sold
12 multiple brands of air fryers.

13 55. Defendant, RJ BRANDS LLC, is a California limited liability company,
14 which has, at all material times hereto, been doing business in the County of Los Angeles and has
15 sold, inter alia, Chefman brand air fryers.

16 56. Defendant, RYLAND HOUSE, is a British company, which has, at all
17 material times hereto, been doing business in the County of Los Angeles, and has sold Pro Breeze
18 brand air fryers.

19 57. Defendant, SECURA INC., is a Wisconsin corporation, which has, at all
20 material times hereto, been doing business in the County of Los Angeles, and has sold Secura brand
21 air fryers.

22 58. Defendant, SENSIO INC., is a Canadian corporation located in Montreal,
23 which has, at all material times hereto, been doing business in the County of Los Angeles, and has
24 sold Bella brand air fryers.

25 59. Defendant, SEQUENTIAL BRANDS GROUP, INC., is a Delaware
26 corporation, which has, at all material times hereto, been doing business in the County of Los
27 Angeles, and has sold, inter alia, Emeril Lagasse brand air fryers.

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1 60. Defendant, SHARKNINJA OPERATING LLC, is a Delaware Limited
2 Liability Company, which has, at all material times hereto, been doing business in the County of Los
3 Angeles, and has sold Ninja brand air fryers.

4 61. Defendant, SHENZHEN DAITIANXIA E-COMMERCE CO., LTD., is a
5 company located in Hong Kong, which has, at all material times hereto, been doing business in the
6 County of Los Angeles, and has sold Mimoday brand air fryers.

7 62. Defendant, SHENZHEN PROSCENIC TECHNOLOGY CO., LTD., is a
8 Chinese company located in Shenzhen, China, which has, at all material times hereto, been doing
9 business in the County of Los Angeles, and has sold Proscenice brand air fryers.

10 63. Defendant, SHENZHEN WOMEI TECH CO., LTD., is a Chinese company
11 located in Shenzhen, China, which has, at all material times hereto, been doing business in the
12 County of Los Angeles, and has sold Bagotte brand air fryers.

13 64. Defendant, SICTEC INSTRUMENTS CO. LTD., is a Chinese company
14 located in Hong Kong, which has, at all material times hereto, been doing business in the County of
15 Los Angeles, and has sold Crownful brand air fryers.

16 65. Defendant, SKYLINE BRANDS, INC., is an Illinois corporation, which has,
17 at all material times hereto, been doing business in the County of Los Angeles, and has sold, inter
18 alia, Aria brand air fryers.

19 66. Defendant, STOREBOUND HOLDING, LLC, is a Delaware Limited Liability
20 Company, which has, at all material times hereto, been doing business in the County of Los Angeles,
21 and has sold, inter alia, Dash brand air fryers.

22 67. Defendant, SUBSTANBO INNOVATIONS TECHNOLOGY LIMITED, is
23 a Chinese company located in Hong Kong, which has, at all material times hereto, been doing
24 business in the County of Los Angeles, and has sold, inter alia, CalmDo brand air fryers.

25 68. Defendant, SUNVALLEYTEK INTERNATIONAL, INC., is a California
26 corporation, which has, at all material times hereto, been doing business in the County of Los
27 Angeles, and has sold TaoTronics brand air fryers.

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69. Defendant, TARGET CORPORATION, is a Minnesota corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and is a retailer that has sold multiple brands of air fryers.

70. Defendant, TOPNET, INC., is a California corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold, inter alia, Ovente brand air fryers.

71. Defendant, TOSHIBA LIFESTYLE PRODUCTS & SERVICES CORPORATION, is a corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold Toshiba brand air fryers.

72. Defendant, TRISTAR PRODUCTS, INC., is a Pennsylvania corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold various brands of air fryers, including but not limited, to Power brand air fryers and Emeril Lagasse brand air fryers.

73. Defendant, TTK PRESTIGE LIMITED, is an Indian company located in Karnataka, India, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold TTK Prestige brand air fryers.

74. Defendant, ULTREAN, INC., is a Nevada corporation, which has, at all material times hereto, been doing business in the County of Los Angeles and has sold Ultrean brand air fryers.

75. Defendant, WALMART INC., is a Delaware corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and is a major retailer that has sold multiple brands of air fryers.

76. Defendant, WAYFAIR, INC., is a Delaware corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and is an e-commerce retailer that has sold multiple brands of air fryers.

77. Defendant, WENZHOU CITY LEKA E-COMMERCE CO., LTD., is a Chinese company located in Zhe Jiang Province, China, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold MooSoo brand air fryers.

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78. Defendant, WHIRLPOOL CORPORATION, is a Delaware corporation, which has, at all material times hereto, been doing business in the County of Los Angeles and has sold sold Kitchen-Aid brand air fryers and Aria brand air fryers (as successor of Indesit Co.).

79. Defendant, WILLIAMS-SONOMA, INC., is a Delaware corporation, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold Williams-Sonoma brand air fryers.

80. Defendant, ZHUHAI QIYIJIE ELECTRONIC COMMERCE CO. LTD., is a Chinese company located in Zhuhai, China, which has, at all material times hereto, been doing business in the County of Los Angeles, and has sold Sboly brand air fryers.

81. The true names and capacities of Defendants Does 1 through 100 are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this complaint to state the true names and capacities of said fictitious defendants when they have been ascertained.

82. Plaintiff is informed and believes and alleges, that at all material times, Defendants were acting in an individual, corporate, partnership, associate, conspiratorial or other capacity or as the agent, employee, co-conspirator, or alter ego of their co-defendants, and in doing the acts herein alleged, were acting within the course and scope of their authority as such partner, associate, agent, employee, co-conspirator, or alter ego, and with the permission, consent, knowledge, authorization, ratification and direction of their co-defendants.

JURISDICTION AND VENUE

83. This Court has jurisdiction over this case pursuant to Cal. Const. Art. VI, § 10, and pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65").

84. CERT has satisfied all the jurisdictional conditions precedent to maintaining this action by mailing notices of the violations to the persons entitled to receive them, as required by Health and Safety Code § 25249.7, along with Certificates of Merit and the Summary of Proposition 65, all in accordance with the provisions of 27 C.C.R. § 25903.

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85. All said notices of violation were mailed at least 70 days prior the date on which this case was filed (60 days for the notice required by Health & Safety Code § 25249.7(d), plus 10 days for mailing the notice to out-of-state defendants as required by C.C.P. § 1013).

86. More than 70 days have passed since copies of the notices were mailed to all the above-referenced governmental authorities, and neither the Attorney General, any district attorney, nor any city attorney has filed a complaint against defendants for the violations alleged in the notices.

87. The County of Los Angeles is a proper venue for this action pursuant to Code of Civil Procedure § 395 and Health and Safety Code § 25249.7, and because the causes of action and many of the violations arose in the County of Los Angeles.

SUMMARY OF PROPOSITION 65

88. In November 1986, California voters overwhelmingly approved an initiative to address growing concerns about exposure to toxic chemicals. That initiative is now officially known as the Safe Drinking Water and Toxic Enforcement Act, but is commonly referred to by its original name, "Proposition 65."

89. Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, birth defects or other reproductive harm. Agents that cause cancer are called carcinogens; those that cause birth defects or other reproductive harm are called reproductive toxicants. The list, which must by law be updated at least once a year, now contains approximately 1,000 chemicals.

90. Any company with ten or more employees that operates within the State or sells products in California must comply with the requirements of Proposition 65. Under Proposition 65, businesses are prohibited from knowingly discharging listed chemicals into sources of drinking water, and are required to provide a clear and reasonable warning before knowingly and intentionally exposing persons to a listed chemical.

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91. Proposition 65 authorizes the Attorney General, district attorneys, and county and local prosecutors, as well as private citizens, to bring suit against violators to enjoin future violations and to obtain civil penalties for past violations.

92. Proposition 65's warning requirement serves as an incentive for business to substitute less toxic chemicals for listed chemicals and to warn the public where substitution is unfeasible.

93. Enforcement of Proposition 65, which has largely been done by private enforcers rather than the Attorney General, has induced companies to eliminate or reduce carcinogens and reproductive toxins in their products and when such is infeasible, to inform Californians of such exposures. As a result, exposure to listed chemicals has been eliminated where products could be reformulated with less toxic chemicals, and where such has not been feasible, Californians have been informed of hazards so they can make informed choices as consumers.

THE BURDEN OF CANCER FROM THE HUMAN DIET

94. Cancer is a major cause of death and disease worldwide, in the United States, and in the State of California.

95. About 1 in 3 people develop cancer during their lives. About 1.7 million new cancer cases per year are diagnosed in the U.S., with 176,000 new cancers diagnosed in California.

96. The human diet has been linked to about one-third of human cancers and is responsible for more cancer than other factors such as environmental, occupational, iatrogenic, infectious and other causes which together account for approximately two-thirds of human cancers.

97. The human diet is responsible for causing so many human cancers largely because of the presence of carcinogens that is present in the food we eat.

98. Prior to the millenium several carcinogens had been identified in the human diet, but those carcinogens likely accounted for only a small percentage of dietary human cancers.

99. Acrylamide is a neurotoxin that was recognized as an industrial carcinogen in the 1900s; it was listed as a carcinogen in 1990, but was not then known to be present in food.

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1 100. In 2002, Swedish researchers discovered that acrylamide was present in a large
 2 number of plant-based foods. Later that year, European researchers showed that acrylamide is
 3 present in food as a result of the Maillard reaction, the chemical reaction that occurs when food is
 4 cooked at high temperatures that results in “browning.” These researchers determined when foods
 5 containing asparagine and reducing sugars are cooked at high temperature acrylamide is formed.

6 101. Acrylamide is now recognized as the most prevalent carcinogen in the diet.

7 102. Between 2002 and 2006 the FDA collected and published data regarding
 8 acrylamide levels in foods in its *Survey Data on Acrylamide in Food: Total Diet Study Results*. The
 9 data showed high levels of acrylamide in french fries, potato chips, and coffee – which are cooked
 10 at high temperatures by deep frying and roasting. Between 2011 and 2015 the FDA analyzed about
 11 2,500 food samples for acrylamide. These data showed significant decreases in acrylamide
 12 concentrations in potato chips (which was likely due to Proposition 65 litigation by CERT and the
 13 Attorney General), while acrylamide levels in other foods were generally not decreased.

14
 15 **AIR FRYERS**

16
 17 103. An air fryer is a small countertop convection oven designed to simulate deep
 18 frying without submerging the food in oil. A fan circulates hot air at high speed, producing a crisp
 19 layer via browning from the Maillard reaction.

20 104. Air fryers are rather new technology. Phillips introduced the first air fryer in
 21 2010 at a consumer electronics fair in Berlin.

22 105. The air fryer's cooking chamber radiates heat from a heating element near the
 23 food and a fan circulates hot air. Temperatures go up to 250 °C (482 °F) depending on the model.

24 106. In recent years there has been a surge in sales of air fryers, which have become
 25 one of the most popular kitchen appliances, as well as popular gift items.

26 107. The air fryer market size was valued at \$894.3 million in 2018, and is
 27 expected to reach \$1,425.7 million (almost \$1.5 billion) by 2026, registering a compound annual
 28 growth rate of 6.1% from 2019 to 2026. The residential end user segment led in terms of air fryer

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1 market share in 2018 and is expected to retain its dominance throughout the forecast period.

2 108. Traditional frying induces the Maillard reaction at temperatures ranging from
3 140 °C to 165 °C (284 °F to 329 °F) by submerging foods in hot oil, well above the boiling point of
4 water. The air fryer works by coating food in a thin layer of oil while circulating air heated up to 200
5 °C (392 °F) or even 250 °C (482 °F) to apply heat and initiate the reaction. Since air fryers operate
6 at higher temperatures than the temperature for deep frying in oil, air fryers present a risk for
7 increased acrylamide formation in foods cooked in air fryers beyond that of other modes of cooking.

8 109. Air fryer manufacturers and sellers claim that air fryers are healthy choices
9 because air fryers yield browned foods with taste and texture profiles that are acceptable to the
10 consumer while using less oil in cooking than the amount of oil used for deep frying foods.
11 However, no studies have documented any health benefits from air fryers, which present substantial
12 risks of human cancer from increased formation of acrylamide and other heat-formed carcinogens
13 in food cooked at high temperatures in air fryers that still use oil rather than non-toxic modes of
14 cooking such as boiling foods, which does not use any oil and does not generate any acrylamide.

15
16 **ACRYLAMIDE LEVELS IN FOOD FROM THE USE OF AIR FRYERS**

17
18 110. In early 2021, the Consumer Council of Hong Kong tested 12 air fryer models
19 and found that 6 of them posed safety hazards to consumers, including excessive temperature rise
20 of some parts, insufficient insulation distance, inadequate grounding terminal, etc. The organization
21 also assessed levels of acrylamide generated by air frying. Frozen thin French fries were air-fried
22 according to the instruction of the user manual or the recipe provided by the retailer. The results
23 showed that all models produced acrylamide at levels in the french fries ranging from 102 µg/kg to
24 7,038 µg/kg, and that half of the models yielded acrylamide concentrations in excess of the
25 benchmark level established by the European Union of 500 µg/kg, with one sample exceeding the
26 European Union benchmark concentration 16-fold! All of the air fryers generated acrylamide at
27 levels that would result in exposure to consumers that greatly exceed the “safe harbor” level of 0.2
28 µg/day long ago established by the California Office of Environmental Health Hazard Assessment.

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111. Following publication of the results of the Consumer Council study, the program Talking Point selected three foods commonly consumed in Asia – chicken wings, *selar kuning* (yellow-banded scad, the fish that often accompanies *nasi lemak*) and French fries -- to test acrylamide and fat levels from air frying. While the three food items had less saturated fats from air-frying than from deep-frying and there was little to no difference in trans fat levels between the air-fried and deep-fried versions of *selar kuning* and French fries, the difference in acrylamide levels between the air-fried and deep-fried French fries was shocking. The deep-fried French fries contained less than 10 µg/kg, while the air-fried French fries contained a staggering 1,400 µg/kg.

112. These results are consistent with an earlier study that showed much greater acrylamide formation in frozen potato sticks specifically intended for oven cooking when air-fried in an Italian air fryer (273 µg/kg) compared with deep frying in oil (63 µg/kg). Giovanelli G, et al., “Comparative study of physico-chemical and sensory characteristics of French fries prepared from frozen potatoes using different cooking systems,” *Eur. Food Res. Technol.* 2017; 243:1619-1631.

113. Thus, air-fryer are machines that generate levels of acrylamide in foods that result in exposures to acrylamide that present significant risks of cancer to California consumers.

GENERAL ALLEGATIONS

114. For at least the past several years, Defendants have engaged in the business of manufacturing, distributing, and/or selling air fryers to consumers in the State of California.

115. For at least the past several years, and continuing to the present, Defendants have exposed and continue to expose countless persons who consume foods cooked with the air fryers manufactured, distributed, and/or sold by Defendants within the State of California, including within the cities of Los Angeles, San Diego, San Francisco, and San Jose, to high levels of acrylamide, a toxic and carcinogenic chemical that is formed in foods air-fried in the air fryers manufactured, distributed and/or sold in California by Defendants.

116. Defendants’ air fryers necessarily exposed persons in California to acrylamide in foods air-fried in their air fryers, because the air-fryers all operate at high temperatures that form

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1 acrylamide in foods that are air-fried in them and persons who consume such foods are necessarily
2 exposed to acrylamide in the air-fried foods because those foods are ingested by consumers as food.

3 117. Acrylamide is a chemical known to the State of California to cause cancer and
4 has been listed since January 1, 1990 as a carcinogen on the list of carcinogenic chemicals published
5 by the Governor of the State of California at 27 California Code of Regulations § 27001.

6 118. Because acrylamide is listed in Proposition 65 as a carcinogen, pursuant to
7 Health & Safety Code § 25249.6, Defendants were and are required to warn purchasers and their
8 families that their air fryers expose them to acrylamide, a chemical known by the State to cause
9 cancer, before exposing consumers to acrylamide in foods air-fried in their air fryers.

10 119. For the past several years, Defendants have violated and continue to violate
11 California Health & Safety Code § 25249.6 by exposing millions of individuals within the State of
12 California to acrylamide in foods cooked in their air fryers without first giving clear and reasonable
13 warnings to said individuals that their air fryers exposed them to acrylamide, a chemical known by
14 the State of California to cause cancer.

15 120. The violations of Health & Safety Code § 25249.6 are numerous and have
16 occurred continuously and uninterrupted for the past several years and continuing to the present.

17 121. The timing of the violations is such that they occurred every moment that
18 every individual within the State of California consumed foods that contain acrylamide formed in
19 the process of air-frying said foods in Defendants' air-fryers, without first receiving the required
20 Proposition 65 warnings for the past several years and continuing to the present.

21 122. At all material times hereto, Defendants concealed from Californians and from
22 Plaintiff that their air fryers generate extraordinarily high levels of acrylamide in air-frying foods and
23 that individuals are exposed to high levels of acrylamide in foods cooked in Defendants' air fryers.

24 123. At all material times hereto, Defendants fraudulently concealed from Plaintiff
25 herein and from Californians exposed to acrylamide from their air fryers material facts concerning
26 the toxic, neurotoxic, developmental, reproductive, and carcinogenic hazards to which their
27 machines exposed individuals consuming foods air-fried in their machines. .

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124. Defendants’ concealment of said carcinogenic and other toxic hazards generated by their air fryers was sufficiently complete that Plaintiff did not know, nor in the exercise of reasonable care could Plaintiff have known, that Defendants were knowingly and intentionally exposing Californians to carcinogens and reproductive toxins in violation of Proposition 65, until Plaintiff discovered such in mid-2021.

125. By mailing Defendants notice of their violations of Proposition 65, the statute of limitations on Plaintiff’s claims against Defendants is further equitably tolled.

FIRST CAUSE OF ACTION

Violation of the Safe Drinking Water and Toxic Enforcement Act
Exposing People to Carcinogen without Warning
California Health and Safety Code § 25249.6
(By Plaintiff Against all Defendants)

126. Plaintiff refers to paragraphs 1 through 125, and, by this reference, incorporates said paragraphs hereat in full.

127. At all times material hereto, Defendants were doing business in California.

128. In the course of doing business in the State of California since January 1, 2018 and continuing to the present, Defendants knowingly and intentionally exposed individuals to acrylamide from the use of their air fryers, without first giving clear and reasonable warning to such individuals and their families.

SECOND CAUSE OF ACTION

For Declaratory Relief
(By Plaintiff Against all Defendants)

129. Plaintiff refers to paragraphs 1 through 128 and, by this reference, incorporates said paragraphs hereat as though set forth in full.

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130. An actual controversy has arisen and now exists between Plaintiff and Defendants.

131. Plaintiff contends the following:

(A). That Defendants are legally obligated to provide cancer hazard warnings on their air fryers that they manufacture, distribute, or sell to the consuming public in the State of California and that Defendants should be enjoined from failing to do so.

(B). That Plaintiff's case, including the First Cause of Action, against Defendants for Violation of the Safe Drinking Water and Toxic Enforcement Act Exposing People to Carcinogen without Warning under California Health and Safety Code § 25249.6 (Proposition 65), serves important public interests which should be litigated and addressed expeditiously by the court.

(C). That the primary jurisdiction doctrine does not apply to this case.

(D). That this action is entitled to preferential trial setting.

(E). That the court cannot and ought not defer this action to await potential or pending regulatory action by the California Office of Environmental Health Hazard Assessment.

(F). That Defendants cannot show that exposure to acrylamide from their air fryers does not pose "no significant risk" according to the "No Significant Risk Level" established by the Office of Environmental Health Hazard Assessment pursuant to 27 C.C.R. § 25705.

(G). That Defendants cannot establish that sound considerations of public health support any alternative risk level for acrylamide exposure from their products, pursuant to 27 C.C.R. § 25703.

(H). That Plaintiff's claims for violations of Proposition 65 are not preempted by the federal Food, Drug and Cosmetic Act.

(I). That Plaintiff's claims for violations of Proposition 65 are not barred by the First Amendment of the United States Constitution.

132. On information and belief, Defendants contend the following:

(A). That they are not legally obligated to provide cancer hazard warnings on their air fryers that they manufacture, distribute or sell to consumers in the State of California.

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(B). That Plaintiffs’ First Cause of Action is not in the public interest and that Plaintiff’s case should be dismissed.

(C). That the primary jurisdiction doctrine applies to this case.

(D). That this action is not entitled to preferential trial setting.

(E). That the court can and should defer this action pending regulatory action by the California Office of Environmental Health Hazard Assessment.

(F). That exposure to acrylamide from Defendants’ air fryers poses “no significant risk” in accordance with the “No Significant Risk Level” established by the Office of Environmental Health Hazard Assessment under 27 C.C.R. § 25705.

(G). That sound considerations of public health support an alternative risk level, pursuant to 27 C.C.R. § 25703.

(H). That Plaintiff’s claims for violations of Proposition 65 are preempted by the federal Food, Drug and Cosmetic Act.

(I). That Plaintiff’s claims for violations of Proposition 65 are barred by the First Amendment of the United States Constitution.

133. Plaintiff desires a judicial determination of the respective rights and duties of the parties. Such a declaration is necessary and appropriate at the present time to determine Plaintiff’s right to bring this action expeditiously to trial and to allow for a judicial determination of the rights of the parties and the merits of Plaintiff’s claims.

PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For a temporary restraining order, preliminary injunction, permanent injunction, and such other injunctive relief as may be had pursuant to Health and Safety Code § 25249.7(a), enjoining Defendants from exposing persons to acrylamide from their air fryers manufactured, distributed and/or sold to consumers in the State of California, without first providing

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clear and reasonable warning that their air fryers expose Californians to acrylamide, a chemical known to the State of California to cause cancer.

2. For civil penalties, pursuant to Health & Safety Code § 25249.7(b), not to exceed \$2,500 per day for each and every violation by each and every Defendant of Proposition 65, in addition to all other penalties established by law.

3. For such other equitable relief, including *cy pres* relief, as may be necessary to effectuate justice and to remedy adverse health effects of Californians who have been exposed to acrylamide from Defendants' air fryers.

4. For a declaration of the rights and obligations of the parties.

5. For Plaintiff's reasonable attorney's fees, pursuant to Code of Civil Procedure § 1021.5.

6. For Plaintiff's costs of suit.

7. For such other relief as the Court deems proper and just.

DATED: October 22, 2021

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Attorneys for Plaintiff,
COUNCIL FOR EDUCATION AND
RESEARCH ON TOXICS ("CERT")