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ENDORSED  
FILED  
AUG -5 2015  
Department of the Superior Court  
County of Santa Clara, California  
By \_\_\_\_\_ (Clerk)

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

ANNA GRIFFIN, INC.; TARGET  
CORPORATION; and DOES 1-150, inclusive,

Defendants

Case No. 115CV284008

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.5 *et seq.*)

Copy

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff JOHN MOORE  
3 (“MOORE”) in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed of the health hazards caused by exposures to di(2-  
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC luggage tag components  
6 sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code  
9 section 6300 *et seq.* who purchase, use or handle defendant’s products about the risks of  
10 exposure to DEHP present in and on vinyl/PVC luggage tag components manufactured,  
11 distributed, and offered for sale or use throughout the State of California. Individuals not  
12 covered by California’s Occupational Safety Health Act, Labor Code section 6300 *et seq.* who  
13 purchase, use or handle defendants’ products are referred to hereinafter as “consumers”.

14 3. Detectable levels of DEHP are found in and on vinyl/PVC luggage tag  
15 components that defendants manufacture, distribute, and offer for sale without a warning to  
16 consumers throughout the State of California.

17 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
18 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
19 doing business shall knowingly and intentionally expose any individual to a chemical known to  
20 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
21 warning to such individual . . .” Health & Safety Code § 25249.6.

22 5. On October 24, 2003, California identified and listed DEHP pursuant to  
23 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP  
24 became subject to the “clear and reasonable warning” requirements of the act one year later on  
25 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 &  
26 25249.10(b).



1           13. Defendant TARGET CORPORATION (“TARGET”) is a person in the course of  
2 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

3           14. TARGET manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
4 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
7 person in the course of doing business within the meaning of Health and Safety Code sections  
8 25249.6 and 25249.11.

9           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
10 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
11 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
12 California.

13           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
14 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
15 and 25249.11.

16           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
17 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
18 in the State of California.

19           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
21 and 25249.11.

22           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
23 State of California.

24           21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
25 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
26 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
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1 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
2 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

3 22. ANNA GRIFFIN, TARGET, MANUFACTURER DEFENDANTS,  
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,  
5 collectively be referred to as "DEFENDANTS."

6  
7 **VENUE AND JURISDICTION**

8 23. Venue is proper in Santa Clara County Superior Court, pursuant to Code of Civil  
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
10 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
11 wrongful conduct occurred, and continue to occur, in this county, and/or because  
12 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with  
13 respect to the PRODUCTS.

14 24. The California Superior Court has jurisdiction over this action pursuant to  
15 California Constitution Article VI, section 10, which grants the Superior Court "original  
16 jurisdiction in all causes except those given by statute to other trial courts." The statute under  
17 which this action is brought does not specify any other basis of subject matter jurisdiction.

18 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
19 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
20 association that is a citizen of the State of California, has sufficient minimum contacts in the  
21 State of California, and/or otherwise purposefully avails itself of the California market.  
22 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
23 California courts consistent with traditional notions of fair play and substantial justice.

24 **FIRST CAUSE OF ACTION**

25 **(Violation of Proposition 65 - Against All Defendants)**

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
27 Paragraphs 1 through 25, inclusive.

1           27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
4 harm.”

5           28. Proposition 65 states, “[n]o person in the course of doing business shall  
6 knowingly and intentionally expose any individual to a chemical known to the state to cause  
7 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
8 individual . . .” Health & Safety Code § 25249.6.

9           29. On May 21, 2015, plaintiff served a sixty-day notice of violation, together with  
10 the requisite certificate of merit, on ANNA GRIFFIN, TARGET and certain public enforcement  
11 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
12 DEHP, consumers in the State of California were being exposed to DEHP resulting from their  
13 reasonably foreseeable use of the PRODUCTS, without the consumers first having been  
14 provided with a “clear and reasonable warning” regarding the harms associated with such  
15 exposures, as required by Proposition 65.

16           30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
17 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
18 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
19 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in  
20 the future.

21           31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
22 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
23 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
24 violation.

25           32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
26 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
27 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
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1 consumers in California are not exempt from the “clear and reasonable” warning requirements  
2 of Proposition 65, yet DEFENDANTS provide no warning.

3 33. DEFENDANTS knew or should have known that the PRODUCTS they  
4 manufactured, imported, distributed, sell, and offer for sale or use in California contain DEHP.

5 34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
6 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

7 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
8 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
9 of Regulations, section 25602(b).

10 36. DEFENDANTS know that the normal and reasonably foreseeable use of the  
11 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

12 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
13 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
14 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
15 consumers in California.

16 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
17 consumers and other individuals in California who were or who would become exposed to  
18 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

19 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
20 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
21 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear  
22 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
23 for which they have no plain, speedy, or adequate remedy at law.

24 40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
25 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
26 for each violation.

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