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ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 29 2018

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

BC 719890

10 CONSUMER ADVOCACY GROUP, INC.,
11 in the public interest,

12 Plaintiff,

13 v.

14 NORTHGATE GONZALEZ MARKETS,
15 INC., a California Corporation;
16 NORTHGATE GONZALEZ MARKETS,
17 INC., STORE #19, a California Corporation;
18 NORTHGATE GONZALEZ, LLC, a
19 California Limited Liability Company;
20 NORTHGATE GONZALEZ EQUITY
21 PARTNERS I, LLC, a California Limited
22 Liability Company;
23 SONORA CORPORATION, a California
24 Corporation; and DOES 1-20;

25 Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
27 Defendants NORTHGATE GONZALEZ MARKETS, INC., NORTHGATE GONZALEZ
28 MARKETS, INC., STORE #19, NORTHGATE GONZALEZ, LLC, NORTHGATE
GONZALEZ EQUITY PARTNERS I, LLC, SONORA CORPORATION, and DOES 1-20 as
follows:

COPY

1 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
2 times mentioned herein have conducted business within the State of California.

3 10. Upon information and belief, at all times relevant to this action, each of the Defendants,
4 including DOES 1-20, was an agent, servant, or employee of each of the other
5 Defendants. In conducting the activities alleged in this Complaint, each of the
6 Defendants was acting within the course and scope of this agency, service, or
7 employment, and was acting with the consent, permission, and authorization of each of
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint
9 were ratified and approved by every other Defendant or their officers or managing agents.
10 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
11 wrongful conduct of each of the other Defendants.

12 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
13 Defendants was a person doing business within the meaning of Health and Safety Code
14 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
15 employees at all relevant times.

16 **JURISDICTION**

17 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
19 those given by statute to other trial courts. This Court has jurisdiction over this action
20 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
21 violations of Proposition 65 in any Court of competent jurisdiction.

22 13. This Court has jurisdiction over Defendants named herein because Defendants either
23 reside or are located in this State or are foreign corporations authorized to do business in
24 California, are registered with the California Secretary of State, or who do sufficient
25 business in California, have sufficient minimum contacts with California, or otherwise
26 intentionally avail themselves of the markets within California through their manufacture,
27 distribution, promotion, marketing, or sale of their products within California to render
28

1 the exercise of jurisdiction by the California courts permissible under traditional notions
2 of fair play and substantial justice.

3 14. Venue is proper in the County of Los Angeles because one or more of the instances of
4 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
5 because Defendants conducted, and continue to conduct, business in the County of Los
6 Angeles with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

8 15. In 1986, California voters approved an initiative to address growing concerns about
9 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
10 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
11 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
12 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
13 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
14 from contamination, to allow consumers to make informed choices about the products
15 they buy, and to enable persons to protect themselves from toxic chemicals as they see
16 fit.

17 16. Proposition 65 requires the Governor of California to publish a list of chemicals known to
18 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
19 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
20 chemicals and chemical families. Proposition 65 imposes warning requirements and
21 other controls that apply to Proposition 65-listed chemicals.

22 17. All businesses with ten (10) or more employees that operate or sell products in California
23 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
24 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
25 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
26 reasonable” warnings before exposing a person, knowingly and intentionally, to a
27 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

28

- 1 18. Proposition 65 provides that any person "violating or threatening to violate" the statute
2 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
3 "Threaten to violate" means "to create a condition in which there is a substantial
4 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
5 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
6 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 7 19. Plaintiff identified certain practices of manufacturers and distributors of products bearing
8 Di (2-ethylhexyl) phthalate ("DEHP") and Di-n-Butyl Phthalate ("DBP"), exposing,
9 knowingly and intentionally, persons in California to said Proposition 65-listed chemical
10 without first providing clear and reasonable warnings to the exposed persons prior to the
11 time of exposure. Plaintiff later discerned that Defendants engaged in such practice
- 12 20. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
13 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
14 to the list of chemicals known to the State to cause developmental and male reproductive
15 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
16 months after addition of DEHP to the list of chemicals known to the State to cause male
17 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
18 requirements and discharge prohibitions.
- 19 21. On December 2, 2005, the Governor of California added DBP to the list of chemicals
20 known to the state to cause developmental, female, and male reproductive toxicity.
21 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
22 after addition of DBP to the list of chemicals known to the State to cause reproductive
23 toxicity, DBP became fully subject to Proposition 65 warning requirements and discharge
24 prohibitions.

25 **SATISFACTION OF PRIOR NOTICE**

- 26 22. On or about February 16, 2018, Plaintiff gave notice of alleged violations of Health and
27 Safety Code section 25249.6, concerning consumer products exposures subject to a
28 private action to NGM, NORTHGATE LLC, SONORA, and to the California Attorney

1 General, County District Attorneys, and City Attorneys for each city containing a
2 population of at least 750,000 people in whose jurisdictions the violations allegedly
3 occurred, concerning the product Backpack, containing DEHP.

4 23. On or about February 28, 2018, Plaintiff gave notice of alleged violations of Health and
5 Safety Code section 25249.6, concerning consumer products exposures subject to a
6 private action to NGM, MARKETS 19, EQUITY PARTNERS, SONORA, and to the
7 California Attorney General, County District Attorneys, and City Attorneys for each city
8 containing a population of at least 750,000 people in whose jurisdictions the violations
9 allegedly occurred, concerning the product Children's BACKPACKS, containing DEHP
10 and DBP.

11 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer
12 products involved, the likelihood that such products would cause users to suffer
13 significant exposures to DEHP and DBP, and the corporate structure of each of the
14 Defendants.

15 25. Plaintiff's notices of alleged violations included a Certificate of Merit executed by the
16 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
17 Plaintiff who executed the certificate had consulted with at least one person with relevant
18 and appropriate expertise who reviewed data regarding the exposures to DEHP and DBP,
19 the subject Proposition 65-listed chemicals of this action. Based on that information, the
20 attorney for Plaintiff who executed the Certificate of Merit believed there was a
21 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
22 to the Certificate of Merit served on the Attorney General the confidential factual
23 information sufficient to establish the basis of the Certificate of Merit.

24 26. Plaintiff's notices of alleged violations also included a Certificate of Service and a
25 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
26 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

1 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violation to NMG, NORTHGATE LLC, SONORA, and the
3 public prosecutors referenced in Paragraph 22.

4 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notices of the alleged violation to NMG, MARKETS 19, EQUITY PARTNERS,
6 SONORA, and the public prosecutors referenced in Paragraph 23.

7 29. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
8 any applicable district attorney or city attorney has commenced and is diligently
9 prosecuting an action against the Defendants.

10 **FIRST CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against NGM, NORTHGATE LLC,
12 SONORA, and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and
13 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

14 **Plastic Backpacks for Kids**

15 30. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 29 of this complaint as though fully set forth herein. Each
17 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
18 promoter, or retailer of Plastic Backpacks for Kids, which includes, but is not limited to,
19 Pink Clear Plastic Backpack for Kids with Jelly Fruits, "Viloe," "Natural Fruits," "NET
20 WEIGHT: 480G(16.93OZ)," "Fruit Jelly," "12 pcs," "Distributor: SONORA
21 CORPORATION, City of Industry, CA 91789," "PRODUCT OF CHINA," UPC:
22 850619007118 ("BACKPACKS").

23 31. BACKPACKS contain DEHP.

24 32. Defendants knew or should have known that DEHP has been identified by the State of
25 California as a chemical known to cause cancer, developmental and male reproductive
26 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
27 were also informed of the presence of DEHP in BACKPACKS within Plaintiff's notice of
28 alleged violations further discussed above at Paragraph 22.

1 33. Plaintiff's allegations regarding BACKPACKS concern "[c]onsumer products
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
4 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §
5 25602(b). BACKPACKS is a consumer product, and, as mentioned herein, exposures to
6 DEHP took place as a result of such normal and foreseeable consumption and use.

7 34. Plaintiff is informed, believes, and thereon alleges that between February 16, 2015, and
8 the present, each of the Defendants knowingly and intentionally exposed their employees,
9 California consumers of BACKPACKS, which Defendants manufactured, distributed, or
10 sold as mentioned above, to DEHP without first providing any type of clear and
11 reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold BACKPACKS in California. Defendants know and
13 intend that California consumers will use and consume BACKPACKS, thereby exposing
14 them to DEHP. Defendants thereby violated Proposition 65.

15 35. The principal routes of exposure are through dermal contact, and indirect ingestion.
16 Persons sustain exposures by using and handling the BACKPACKS without wearing
17 gloves or by touching bare skin or mucous membranes with or without gloves after
18 handling BACKPACKS, as well as direct and indirect hand to mouth contact, hand to
19 mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating
20 from the BACKPACKS during use, as well as through environmental mediums that carry
21 the DEHP once contained within the BACKPACKS.

22 36. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
23 Proposition 65 as to BACKPACKS have been ongoing and continuous to the date of the
24 signing of this complaint, as Defendants engaged and continue to engage in conduct
25 which violates Health and Safety Code section 25249.6, including the manufacture,
26 distribution, promotion, and sale of BACKPACKS, so that a separate and distinct
27 violation of Proposition 65 occurred each and every time a person was exposed to DEHP
28 by BACKPACKS as mentioned herein.

1 37. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 38. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from BACKPACKS, pursuant to
6 Health and Safety Code section 25249.7(b).

7 39. In the absence of equitable relief, the general public will continue to be involuntarily
8 exposed to DEHP that is contained in BACKPACKS, creating a substantial risk of
9 irreparable harm. Thus by committing the acts alleged herein, Defendants have caused
10 irreparable harm for which there is no plain, speedy, or adequate remedy of law.

11 40. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
12 filing this Complaint.

13 **SECOND CAUSE OF ACTION**

14 **(By CONSUMER ADVOCACY GROUP, INC. and against NGM, MARKETS 19,**
15 **SONORA, EQUITY PARTNERS, and DOES 11-20 for Violations of Proposition 65, The**
16 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
25249.5, *et seq.*))

17 **Children's Backpacks**

18
19 41. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
20 reference paragraphs 1 through 40 of this complaint as though fully set forth herein. Each
21 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
22 promoter, or retailer of Children's Backpacks, which includes but is not limited to,
23 "Viloe" Clear Children's Backpack With Light Blue Trim and Straps Containing
24 Individually Packed Fruit Packages "Jelly", "Natural Fruits", "Assorted Flavors", "Net
25 Weight: 480g(16.93oz)" "Fruit Jelly" "12 pcs" "UPC 8 50619 00711 8" ("CHILDREN'S
26 BACKPACKS").

27 42. CHILDREN'S BACKPACKS contain DEHP and DBP.
28

1 43. Defendants knew or should have known that DEHP and DBP have been identified by the
2 State of California as chemicals known to cause cancer and/or reproductive toxicity and
3 therefore was subject to Proposition 65 warning requirements. Defendants were also
4 informed of the presence of DEHP and DBP in CHILDREN'S BACKPACKS within
5 Plaintiff's notice of alleged violations further discussed above at Paragraph 23.

6 44. Plaintiff's allegations regarding CHILDREN'S BACKPACKS concern "[c]onsumer
7 products exposure[s]," which "is an exposure that results from a person's acquisition,
8 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
9 or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27,
10 § 25602(b). CHILDREN'S BACKPACKS is a consumer product, and, as mentioned
11 herein, exposures to DEHP and DBP took place as a result of such normal and
12 foreseeable consumption and use.

13 45. Plaintiff is informed, believes, and thereon alleges that between February 28, 2015, and
14 the present, each of the Defendants knowingly and intentionally exposed their employees,
15 California consumers of CHILDREN'S BACKPACKS, which Defendants manufactured,
16 distributed, or sold as mentioned above, to DEHP and DBP without first providing any
17 type of clear and reasonable warning of such to the exposed persons before the time of
18 exposure. Defendants have distributed and sold CHILDREN'S BACKPACKS in
19 California. Defendants know and intend that California consumers will use and consume
20 CHILDREN'S BACKPACKS, thereby exposing them to DEHP and DBP. Defendants
21 thereby violated Proposition 65.

22 46. The principal routes of exposure are through ingestion, dermal contact, and inhalation.
23 Persons sustain exposures through dermal contact and ingestion or by touching bare skin
24 or mucous membranes with or without gloves after handling CHILDREN'S
25 BACKPACKS, as well as direct and indirect hand to mouth contact, hand to mucous
26 membrane, trans-dermal absorption, or breathing in particulate matter emanating from the
27 CHILDREN'S BACKPACKS during use, as well as through environmental mediums
28 that carry the DEHP and DBPP once contained within the CHILDREN'S BACKPACKS.

1 47. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to CHILDREN'S BACKPACKS have been ongoing and continuous to
3 the date of the signing of this complaint, as Defendants engaged and continue to engage
4 in conduct which violates Health and Safety Code section 25249.6, including the
5 manufacture, distribution, promotion, and sale of CHILDREN'S BACKPACKS, so that a
6 separate and distinct violation of Proposition 65 occurred each and every time a person
7 was exposed to DEHP and DBP by CHILDREN'S BACKPACKS as mentioned herein.

8 48. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
9 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
10 violations alleged herein will continue to occur into the future.

11 49. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to DEHP and DBP from CHILDREN'S
13 BACKPACKS, pursuant to Health and Safety Code section 25249.7(b).

14 50. In the absence of equitable relief, the general public will continue to be involuntarily
15 exposed to DEHP and DBP that is contained in CHILDREN'S BACKPACKS, creating a
16 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
17 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
18 remedy of law.

19 51. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
20 filing this Complaint.

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