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10 Consumer Advocacy Group, Inc.

**FILED**

OCT - 3 2019

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: E. Anderson, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF MARIN**

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,

15 Plaintiff,

16 v.

17 PARTY CITY HOLDINGS, INC., a  
18 Delaware Corporation;  
19 PARTY CITY CORPORATION, a Delaware  
20 Corporation;  
21 TOYCITY.COM, INC., a Delaware  
22 Corporation;  
23 and DOES 1-30;

24 Defendants.

CASE NO.

CIV 1903787

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)

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
26 defendants PARTY CITY HOLDINGS, INC., PARTY CITY CORPORATION,  
27 TOYCITY.COM, INC., and DOES 1-30 as follows:  
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**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant PARTY CITY HOLDINGS, INC ("PARTY CITY") is a Delaware Corporation, doing business in the State of California at all relevant times herein.
3. Defendant PARTY CITY CORPORATION, "(PARTY CITY CORP)", is a Delaware Corporation, doing business in the State of California at all relevant times herein.
4. Defendant TOYCITY.COM, INC. ("TOY CITY") is a Delaware Corporation, doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
6. At all times mentioned herein, the term "Defendants" includes PARTY CITY, PARTY CITY CORP, TOY CITY, and DOES 1-30.
7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-30, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
2 were ratified and approved by every other Defendant or their officers or managing agents.  
3 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
4 wrongful conduct of each of the other Defendants.

- 5 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
6 Defendants was a person doing business within the meaning of Health and Safety Code  
7 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
8 employees at all relevant times.

9 **JURISDICTION**

- 10 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
12 those given by statute to other trial courts. This Court has jurisdiction over this action  
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 11. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their manufacture,  
20 distribution, promotion, marketing, or sale of their products within California to render  
21 the exercise of jurisdiction by the California courts permissible under traditional notions  
22 of fair play and substantial justice.
- 23 12. Venue is proper in the County of Marin because one or more of the instances of wrongful  
24 conduct occurred, and continues to occur, in the County of Marin and/or because  
25 Defendants conducted, and continue to conduct, business in the County of Marin with  
26 respect to the consumer product that is the subject of this action.
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## **BACKGROUND AND PRELIMINARY FACTS**

13. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to allow consumers to make informed choices about the products they buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
14. Proposition 65 requires the Governor of California to publish a list of chemicals known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700 chemicals and chemical families. Proposition 65 imposes warning requirements and other controls that apply to Proposition 65-listed chemicals.
15. All businesses with ten (10) or more employees that operate or sell products in California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable” warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
16. Proposition 65 provides that any person “violating or threatening to violate” the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7. “Threaten to violate” means “to create a condition in which there is a substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 17. Plaintiff identified certain practices of manufacturers and distributors of Plastic Handbags  
2 of exposing, knowingly and intentionally, persons in California to the Proposition 65-  
3 listed chemicals of such products without first providing clear and reasonable warnings of  
4 such to the exposed persons prior to the time of exposure. Plaintiff later discerned that  
5 Defendants engaged in such practice.

6 18. On January 1, 1988, the Governor of California added Di (2-ethylhexyl) phthalate  
7 ("DEHP"), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, to  
8 the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §  
9 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty  
10 (20) months after addition of DEHP to the list of chemicals known to the State to cause  
11 cancer, DEHP became fully subject to Proposition 65 warning requirements and  
12 discharge prohibitions.

13 19. On October 24, 2003, the Governor of California added DEHP to the list of chemicals  
14 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).  
15 DEHP is known to the State to cause developmental, female, and male reproductive  
16 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
17 months after addition of DEHP to the list of chemicals known to the State to cause  
18 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
19 requirements and discharge prohibitions.

20 **SATISFACTION OF PRIOR NOTICE**

21 20. On or about February 12, 2019, Plaintiff gave notice of alleged violations of Health and  
22 Safety Code section 25249.6, concerning consumer products exposures subject to a  
23 private action to PARTY CITY CORP, and to the California Attorney General, County  
24 District Attorneys, and City Attorneys for each city containing a population of at least  
25 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
26 product Plastic Handbags.

- 1 21. On or about February 12, 2019, Plaintiff gave notice of alleged violations of Health and  
2 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
3 private action to PARTY CITY, PARTY CITY CORP, TOY CITY, and to the California  
4 Attorney General, County District Attorneys, and City Attorneys for each city containing  
5 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
6 occurred, concerning the product Virtual Reality Headset.
- 7 22. On or about April 5, 2019, Plaintiff gave notice of alleged violations of Health and Safety  
8 Code section 25249.6, concerning consumer products exposures subject to a private  
9 action to PARTY CITY CORP, and to the California Attorney General, County District  
10 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
11 people in whose jurisdictions the violations allegedly occurred, concerning the product  
12 Children's Sequined Handbag with Plastic or Vinyl Components.
- 13 23. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
14 products involved, the likelihood that such products would cause users to suffer  
15 significant exposures to DEHP, and the corporate structure of each of the Defendants.
- 16 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
17 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
18 Plaintiff who executed the certificate had consulted with at least one person with relevant  
19 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
20 subject Proposition 65-listed chemical of this action. Based on that information, the  
21 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
22 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
23 to the Certificate of Merit served on the Attorney General the confidential factual  
24 information sufficient to establish the basis of the Certificate of Merit.
- 25 25. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
26 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
27 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
- 28

1 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
2 gave notices of the alleged violations to, PARTY CITY, PARTY CITY CORP, TOY  
3 CITY, and the public prosecutors referenced in Paragraphs 20 to 22.

4 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
5 any applicable district attorney or city attorney has commenced and is diligently  
6 prosecuting an action against the Defendants.

7  
8 **FIRST CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against PARTY CITY CORP, and**  
10 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
11 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

12 **Fashion Accessories**

13 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
14 reference paragraphs 1 through 27 of this complaint as though fully set forth herein.

15 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
16 distributor, promoter, or retailer of Plastic Handbag ("Handbag"), including but not  
17 limited to: "expressions;" "HANDBAG SAC A MAIN;" "Almar SALES COMPANY;"  
18 "New York, NY 10001;" "www.almarsales.coni;" "EXB1087;" "RN116779;" "Made in  
19 China;" "YC-1807-3246;" "1 90425048562"

20 30. Handbag contains DEHP.

21 31. Defendants knew or should have known that DEHP has been identified by the State of  
22 California as a chemical known to cause cancer and reproductive toxicity and therefore  
23 was subject to Proposition 65 warning requirements. Defendants were also informed of  
24 the presence of DEHP in Handbag within Plaintiff's notice of alleged violations further  
25 discussed above at Paragraph 20.

26 32. Plaintiff's allegations regarding Handbag concerns "[c]onsumer products exposure[s],"  
27 which "is an exposure that results from a person's acquisition, purchase, storage,  
28 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

1 Handbags are consumer products, and, as mentioned herein, exposures to DEHP took  
2 place as a result of such normal and foreseeable consumption and use.

3 33. Plaintiff is informed, believes, and thereon alleges that between February 12, 2016 and  
4 the present, each of the Defendants knowingly and intentionally exposed California  
5 consumers and users of Handbag, which Defendants manufactured, distributed, or sold as  
6 mentioned above, to DEHP, without first providing any type of clear and reasonable  
7 warning of such to the exposed persons before the time of exposure. Defendants have  
8 distributed and sold Handbag in California. Defendants know and intend that California  
9 consumers will use Handbag, thereby exposing them to DEHP. Defendants thereby  
10 violated Proposition 65.

11 34. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
12 Persons sustain exposures by handling Handbag without wearing gloves or any other  
13 personal protective equipment, or by touching bare skin or mucous membranes with  
14 gloves after handling Handbag, as well as through direct and indirect hand to mouth  
15 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
16 Handbag.

17 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
18 Proposition 65 as to Handbag have been ongoing and continuous, as Defendants engaged  
19 and continue to engage in conduct which violates Health and Safety Code section  
20 25249.6, including the manufacture, distribution, promotion, and sale of Handbag, so that  
21 a separate and distinct violation of Proposition 65 occurred each and every time a person  
22 was exposed to DEHP by Handbag as mentioned herein.

23 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
25 violations alleged herein will continue to occur into the future.  
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1 37. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to DEHP from Handbag, pursuant to Health  
3 and Safety Code section 25249.7(b).

4 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

6  
7 **SECOND CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against PARTY CITY, PARTY CITY**  
9 **CORP, TOY CITY and DOES 11-20 for Violations of Proposition 65, The Safe Drinking**  
10 **Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

11 **Electronic Accessories**

12 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
13 reference paragraphs 1 through 38 of this complaint as though fully set forth herein.

14 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of Virtual Reality Headset ("Headset"), including but not  
16 limited to: "Cynoculars Virtual Reality Headset + Remote"; "HYPE <sup>TM</sup>"; "As seen on  
17 TV"; "Play VR Games, Watch 3D Movies, View 360 Photos & Videos"; "Fits devices up  
18 to 3.5' wide"; "Wireless gaming remote included"; UPC 8 88255169369 6"; "Made in  
19 China".

20 41. Headset contains DEHP.

21 42. Defendants knew or should have known that DEHP has been identified by the State of  
22 California as a chemical known to cause cancer and reproductive toxicity and therefore  
23 was subject to Proposition 65 warning requirements. Defendants were also informed of  
24 the presence of DEHP in Headset within Plaintiff's notice of alleged violations further  
25 discussed above at Paragraph 21.

26 43. Plaintiff's allegations regarding Headset concerns "[c]onsumer products exposure[s],"  
27 which "is an exposure that results from a person's acquisition, purchase, storage,  
28 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

1 Headset is a consumer product, and, as mentioned herein, exposures to DEHP took place  
2 as a result of such normal and foreseeable consumption and use.

3 44. Plaintiff is informed, believes, and thereon alleges that between February 12, 2016 and  
4 the present, each of the Defendants knowingly and intentionally exposed California  
5 consumers and users of Headset, which Defendants manufactured, distributed, or sold as  
6 mentioned above, to DEHP, without first providing any type of clear and reasonable  
7 warning of such to the exposed persons before the time of exposure. Defendants have  
8 distributed and sold Headset in California. Defendants know and intend that California  
9 consumers will use Headset, thereby exposing them to DEHP. Defendants thereby  
10 violated Proposition 65.

11 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
12 Persons sustain exposures by handling Headset without wearing gloves or any other  
13 personal protective equipment, or by touching bare skin or mucous membranes with  
14 gloves after handling Headset, as well as through direct and indirect hand to mouth  
15 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
16 Headset.

17 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
18 Proposition 65 as to Headset have been ongoing and continuous, as Defendants engaged  
19 and continue to engage in conduct which violates Health and Safety Code section  
20 25249.6, including the manufacture, distribution, promotion, and sale of Headset, so that  
21 a separate and distinct violation of Proposition 65 occurred each and every time a person  
22 was exposed to DEHP by Headset as mentioned herein.

23 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
25 violations alleged herein will continue to occur into the future.  
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1 48. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to DEHP from Headset, pursuant to Health  
3 and Safety Code section 25249.7(b).

4 49. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

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7 **THIRD CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against PARTY CITY CORP, and**  
9 **DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
10 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

11 **Kids' Accessories**

12 50. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
13 reference paragraphs 1 through 49 of this complaint as though fully set forth herein.

14 51. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of Children's Sequined Handbag with Plastic  
16 or Vinyl Components ("Children's Handbag"), including but not limited to: "Expressions  
17 Handbag Sac A Main"; "Almar Sales Company © Copyright Almar Sales Co. New York,  
18 NY 10001 www. almarsales.com"; "Caution: Keep Away From Fire"; "Age 3+ 3 Ans+";  
19 "EXB1088"; "UPC 1 90425 04857 9"; "YC-1807-3246"; "Made in China"

20 52. Children's Handbag contains DEHP.

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

26 54. Plaintiff's allegations regarding Children's Handbag concerns "[c]onsumer products  
27 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
28 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*

1 25602(b). Children's Handbags are consumer products, and, as mentioned herein,  
2 exposures to DEHP took place as a result of such normal and foreseeable consumption  
3 and use.

4 55. Plaintiff is informed, believes, and thereon alleges that between April 5, 2016 and the  
5 present, each of the Defendants knowingly and intentionally exposed California  
6 consumers and users of Children's Handbag, which Defendants manufactured,  
7 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
8 clear and reasonable warning of such to the exposed persons before the time of exposure.  
9 Defendants have distributed and sold Children's Handbag in California. Defendants  
10 know and intend that California consumers will use Children's Handbag, thereby  
11 exposing them to DEHP. Defendants thereby violated Proposition 65.

12 56. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
13 Persons sustain exposures by handling Children's Handbag without wearing gloves or  
14 any other personal protective equipment, or by touching bare skin or mucous membranes  
15 with gloves after handling Children's Handbag, as well as through direct and indirect  
16 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter  
17 dispersed from Children's Handbag.

18 57. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
19 Proposition 65 as to Children's Handbag have been ongoing and continuous, as  
20 Defendants engaged and continue to engage in conduct which violates Health and Safety  
21 Code section 25249.6, including the manufacture, distribution, promotion, and sale of  
22 Children's Handbag, so that a separate and distinct violation of Proposition 65 occurred  
23 each and every time a person was exposed to DEHP by Children's Handbag as mentioned  
24 herein.

25 58. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
27 violations alleged herein will continue to occur into the future.  
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1 59. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to DEHP from Children's Handbag, pursuant  
3 to Health and Safety Code section 25249.7(b).

4 60. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

6  
7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each of the Defendants as follows:

- 9 1. A permanent injunction mandating Proposition 65-compliant warnings;  
10 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
11 3. Costs of suit;  
12 4. Reasonable attorney fees and costs; and  
13 5. Any further relief that the court may deem just and equitable.

14  
15 Dated: October 2, 2019

YEROUSHALMI & YEROUSHALMI

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17  
18 BY: 

19 Reuben Yeroushalmi  
20 Attorneys for Plaintiff,  
21 Consumer Advocacy Group, Inc.  
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