

Filed By Fax

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

JUL 20 2020
CLERK OF THE SUPERIOR COURT
By *Jessica Flanagan*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 TARGET CORPORATION,
14 Defendant.

Case No.: **RG20068380**
**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code § 25249.5 et
seq.)**

15 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the following
16 cause of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
20 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
21 "[n]o person in the course of doing business shall knowingly and intentionally expose any
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
23 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in Eco Style Argan
27 oil gels sold and/or distributed by defendant Target Corporation ("Target" or the "Defendant") in
28 California.

1 3. DEA is a harmful chemical known to the State of California to cause cancer. On
2 June 22, 2012, the State of California listed DEA as a chemical known to the State to cause cancer
3 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.
4 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

5 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
6 within California or sell products therein to comply with Proposition 65 regulations. Included in
7 such regulations is the requirement that businesses must label any product containing a Proposition
8 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
9 exposing any person to any such listed chemical.

10 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
11 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
12 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
13 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
14 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
15 25249.7.

16 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
17 without a requisite exposure warning, Eco Style Argan oil gels (the “Products”) that expose
18 persons to DEA.

19 7. Defendant’s failure to warn consumers and other individuals in California of the
20 health hazards associated with exposure to DEA in conjunction with the sale and/or distribution
21 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
22 penalties described herein.

23 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65
24 in accordance with Health and Safety Code § 25249.7(b).

25 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
26 Defendant to provide purchasers or users of the Products with required warnings related to the
27 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code
28 § 25249.7(a).

1 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

2 **PARTIES**

3 11. Plaintiff is a citizen of the State of California acting in the interest of the general
4 public to promote awareness of exposures to toxic chemicals in products sold in California and to
5 improve human health by reducing hazardous substances contained in such items. He brings this
6 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

7 12. Defendant Target, through its business, effectively imports, distributes, sells, and/or
8 offers the Products for sale or use in the State of California, or it implies by its conduct that it
9 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

10 13. Plaintiff alleges that defendant Target is a “person” in the course of doing business
11 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

12 **VENUE AND JURISDICTION**

13 14. Venue is proper in the County of Alameda because one or more of the instances of
14 wrongful conduct occurred, and continue to occur in this county and/or because Defendant
15 conducted, and continues to conduct, business in the County of Alameda with respect to the
16 Products.

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

22 16. This Court has jurisdiction over Defendant because Defendant is either a citizen of
23 the State of California, has sufficient minimum contacts with the State of California, is registered
24 with the California Secretary of State as foreign corporations authorized to do business in the State
25 of California, and/or has otherwise purposefully availed itself of the California market. Such
26 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
27 permissible with traditional notions of fair play and substantial justice.

28 **STATUTORY BACKGROUND**

1 17. The people of the State of California declared in Proposition 65 their right “[t]o be
2 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
3 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

4 18. To effect this goal, Proposition 65 requires that individuals be provided with a
5 “clear and reasonable warning” before being exposed to substances listed by the State of California
6 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

7 No person in the course of doing business shall knowingly and intentionally expose any
8 individual to a chemical known to the state to cause cancer or reproductive toxicity without
9 first giving clear and reasonable warning to such individual...

10 19. An exposure to a chemical in a consumer product is one “which results from a
11 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
12 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
13 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
14 shall provide a warning to any person to whom the product is sold or transferred unless the product
15 is packaged or labeled with a clear and reasonable warning.”

16 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
17 more of the following methods individually or in combination:¹

18 a. A warning that appears on a product’s label or other labeling.

19 b. Identification of the product at the retail outlet in a manner which provides
20 a warning. Identification may be through shelf labeling, signs, menus, or a combination
21 thereof.

22 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
23 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
24 with such conspicuousness, as compared with other words, statements, designs, or devices
25

26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.*, as amended on August 30,
2016, and operative on August 30, 2018.

1 in the label, labeling or display as to render it likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use.

3 d. A system of signs, public advertising identifying the system and toll-free
4 information services, or any other system that provides clear and reasonable warnings.

5 21. Proposition 65 provides that any “person who violates or threatens to violate” the
6 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
7 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
8 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
9 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
10 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

11 **FACTUAL BACKGROUND**

12 22. On June 22, 2012, the State of California listed DEA as a chemical known to the
13 State to cause cancer and it has come under the purview of Proposition 65 regulations since that
14 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). In
15 summary, the Listed Chemical was listed under Proposition 65 as a chemical known to the State
16 to cause cancer.

17 23. The consumer exposures that are the subject of this Complaint result from through
18 dermal absorption. Exposure to consumers includes, but is not limited to, when handling the
19 Products, DEA comes into contact with the hands and is then absorbed through the skin.
20 Additionally, dermal absorption of DEA can occur through direct skin contact with the Products
21 when they are applied to the user’s hair and comes into contact with portions of the user’s skin.
22 Representative areas of the user’s skin may include, but are not limited to, the user’s scalp, neck,
23 ears, and shoulders. Exposure can continue to occur for a significant period after the initial contact.
24 Finally, while ingestion of the Products does not seem likely, some amount of exposure through
25 ingestion can occur by touching the Products subsequent touching of the user’s hand to mouth,
26 through hand to food to mouth contact, or through hand to cigarette to mouth contact.

1 24. Defendant has supplied, processed, marketed, distributed, offered to sell and/or sold
2 the Products in California since at least July 5, 2019. The Products continue to be distributed and
3 sold in California without the requisite warning information.

4 25. At all times relevant to this action, Defendant has knowingly and intentionally
5 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
6 giving a clear and reasonable exposure warning to such individuals.

7 26. As a proximate result of acts by Defendant, as a person in the course of doing
8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
9 California, including in Alameda County, have been exposed to the Listed Chemical without a
10 clear and reasonable warning on the Products. The individuals subject to the violative exposures
11 include normal and foreseeable users, consumers and patients that use the Products, as well as all
12 others exposed to the Products.

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 27. On July 5, 2019, Plaintiff gave notice of alleged violation of Health and Safety
15 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to DEA
16 contained in the Products without proper warning, subject to a private action to Defendant and to
17 the California Attorney General’s office and the offices of the County District attorneys and City
18 Attorneys for each city with a population greater than 750,000 persons wherein the herein
19 violations allegedly occurred.

20 28. The Notice complied with all procedural requirements of Proposition 65 including
21 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
22 least one person with relevant and appropriate expertise who reviewed relevant data regarding
23 DEA exposure, and that counsel believed there was meritorious and reasonable cause for a private
24 action.

25 29. After receiving the Notice, and to Plaintiff’s best information and belief, none of
26 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
27 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
28 the subject of the Notice.

1 30. Plaintiff is commencing this action more than sixty (60) days from the date of the
2 Notice to Defendant, as required by law.

3 **FIRST CAUSE OF ACTION**

4 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

5 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of
6 this Complaint as though fully set forth herein.

7 32. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
8 the Product.

9 33. The Products contain DEA, a hazardous chemical found on the Proposition 65 list
10 of chemicals known to be hazardous to human health.

11 34. The Products do not comply with the Proposition 65 warning requirements.

12 35. Plaintiff, based on his best information and belief, avers that at all relevant times
13 herein, and at least since July 5, 2019, continuing until the present, that Defendant has continued
14 to knowingly and intentionally expose California users and consumers of the Product to DEA
15 without providing required warnings under Proposition 65.

16 36. The exposures that are the subject of the Notice result from the purchase,
17 acquisition, handling and recommended use of the Products. Consequently, the primary route of
18 exposure to these chemicals is through dermal exposure. Exposure to consumers includes, but is
19 not limited to, when handling the Products, DEA comes into contact with the hands and is then
20 absorbed through the skin. Additionally, dermal absorption of DEA can occur through direct skin
21 contact with the Products when they are applied to the user's hair and comes into contact with
22 portions of the user's skin. Representative areas of the user's skin may include, but are not limited
23 to, the user's scalp, neck, ears, and shoulders. Exposure can continue to occur for a significant
24 period after the initial contact. Finally, while ingestion of the Products does not seem likely, some
25 amount of exposure through ingestion can occur by touching the Products subsequent touching of
26 the user's hand to mouth, through hand to food to mouth contact, or through hand to cigarette to
27 mouth contact.

1 37. Plaintiff, based on his best information and belief, avers that such exposures will
2 continue every day until clear and reasonable warnings are provided to Product purchasers and
3 users or until this known toxic chemical is removed from the Products.

4 38. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to DEA, and Defendant intends that exposures to DEA will occur by
6 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
7 Products to consumers in California

8 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
9 Complaint.

10 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
11 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

12 41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
13 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
16 relief:

17 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
18 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
19 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);


20 B. That the court preliminarily and permanently enjoin Defendant mandating
21 Proposition 65 compliant warnings on the Product;

22 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
23 amount of \$50,000.00.

24 D. That the court grant any further relief as may be just and proper.

25 Dated: July 17, 2020

BRODSKY & SMITH, LLC

26 By: 
27 Evan J. Smith (SBN242352)
28 Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28