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ALAMEDA COUNTY

MAR 09 2021

CLERK OF THE SUPERIOR COURT  
By JAME THOMAS  
JAME THOMAS, Deputy

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 ANTHONY FERREIRO,

13 Plaintiff,

14 vs.

15 TARGET CORPORATION,

16 Defendant.

Case No.: RG20068380

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

(Violation of Health & Safety Code § 25249.5 et  
seq.)

Dept.: 20  
Judge: Paul D. Herbert

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

19 **BACKGROUND OF THE CASE**

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

26 2. This first amended complaint is a representative action brought by Plaintiff in the  
27 public interest of the citizens of the State of California to enforce the People's right to be informed  
28 of the health hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in Eco  
Style Argan oil gels sold and/or distributed by defendants Target Corporation ("Target") and  
Ecoco, Inc. ("Ecoco") (Collectively, "Defendants") in 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 Defendants manufacture, distribute and/or offer for sale in  
17 California, without a requisite exposure warning, Eco Style Argan oil gels (the “Products”) that  
18 expose persons to DEA.

19          7.       Defendants’ 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 Defendants to the enjoinder and civil  
22 penalties described herein.

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

25          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
26 Defendants 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 registered with the California Secretary of State as foreign corporations authorized to do business  
2 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
4 and permissible with traditional notions of fair play and substantial justice.

### 5 STATUTORY BACKGROUND

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

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

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

15 19. An exposure to a chemical in a consumer product is one “which results from a  
16 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
17 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
18 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
19 shall provide a warning to any person to whom the product is sold or transferred unless the product  
20 is packaged or labeled with a clear and reasonable warning.”

21 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
22 more of the following methods individually or in combination:<sup>1</sup>

23 a. A warning that appears on a product’s label or other labeling.  
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27 <sup>1</sup> 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 neck, ears, and shoulders. Exposure can continue to occur for a significant period after the initial  
2 contact. Finally, while ingestion of the Products does not seem likely, some amount of exposure  
3 through ingestion can occur by touching the Products subsequent touching of the user's hand to  
4 mouth, through hand to food to mouth contact, or through hand to cigarette to mouth contact.

5 24. Defendants have supplied, processed, marketed, distributed, offered to sell and/or  
6 sold the Products in California since at least July 5, 2019. The Products continue to be distributed  
7 and sold in California without the requisite warning information.

8 25. At all times relevant to this action, Defendants have knowingly and intentionally  
9 exposed users, consumers and/or patients to the Products and the Listed Chemical without first  
10 giving a clear and reasonable exposure warning to such individuals.

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

17 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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



1 amount of exposure through ingestion can occur by touching the Products subsequent touching of  
2 the user's hand to mouth, through hand to food to mouth contact, or through hand to cigarette to  
3 mouth contact.

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

7 38. Defendants have knowledge that the normal and reasonably foreseeable use of the  
8 Product exposes individuals to DEA, and Defendants intend that exposures to DEA will occur by  
9 their deliberate, non-accidental participation in the importation, distribution, sale and offering of  
10 the Products to consumers in California

11 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
12 first amended complaint.

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

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

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
19 relief:

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

23 B. That the court preliminarily and permanently enjoin Defendants mandating  
24 Proposition 65 compliant warnings on the Product;

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

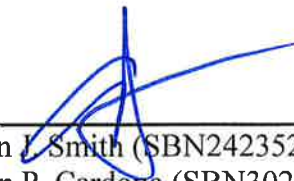
27 D. That the court grant any further relief as may be just and proper.

28 Dated: March 9, 2021

BRODSKY & SMITH, LLC



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