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**FILED**  
San Francisco County Superior Court

JUL 08 2020 @

CLERK OF THE COURT  
BY: *Amazew Jones*  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

13 AMERICAN CREW, INC., TARGET  
14 CORPORATION,

15 Defendants.

Case No. **CGC - 20 - 585325**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People's right to be informed of the health  
27 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in American Crew  
28

BY FAX

1 firm hold gels sold and/or distributed by defendants American Crew, Inc. (“American Crew”) and  
2 Target Corporation (“Target”) (collectively, “Defendants”) in California.

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

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

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
17 25249.7.

18 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
19 without a requisite exposure warning, American Crew firm hold gels (the “Products”) that expose  
20 persons to DEA.

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

25 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendants to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code  
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

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

9 12. Defendant American Crew, through its business, effectively imports, distributes,  
10 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
11 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
12 Plaintiff alleges that defendant American Crew is a "person" in the course of doing business within  
13 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 13. Defendant Target, through its business, effectively imports, distributes, sells, and/or  
15 offers the Products for sale or use in the State of California, or it implies by its conduct that it  
16 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
17 Plaintiff alleges that defendant Target is a "person" in the course of doing business within the  
18 meaning of Health & Safety Code sections 25249.6 and 25249.11.

19 **VENUE AND JURISDICTION**

20 14. Venue is proper in the County of San Francisco because one or more of the  
21 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
22 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
23 respect to the Products.

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



- 1 b. Identification of the product at the retail outlet in a manner which provides a  
2 warning. Identification may be through shelf labeling, signs, menus, or a  
3 combination thereof.
- 4 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
5 prominently placed upon a product's labels or other labeling or displayed at the  
6 retail outlet with such conspicuousness, as compared with other words,  
7 statements, designs, or devices in the label, labeling or display as to render it  
8 likely to be read and understood by an ordinary individual under customary  
9 conditions of purchase or use.
- 10 d. A system of signs, public advertising identifying the system and toll-free  
11 information services, or any other system that provides clear and reasonable  
12 warnings.

13 21. Proposition 65 provides that any "person who violates or threatens to violate" the  
14 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
15 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
16 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
17 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
18 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

#### 19 FACTUAL BACKGROUND

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

25 23. The consumer exposures that are the subject of this Complaint result from through  
26 dermal absorption. Exposure to consumers includes, but is not limited to, when handling the  
27 Products, DEA comes into contact with the hands and is then absorbed through the skin.  
28 Additionally, dermal absorption of DEA can occur through direct skin contact with the Products  
when it is applied to the user's hair and comes into contact with portions of the user's skin.  
Representative areas of the user's skin may include, but are not limited to, the user's scalp, neck,  
ears, and shoulders. Exposure may continue to occur for a significant period after the initial

1 contact. Finally, while ingestion of the Products does not seem likely, some amount of exposure  
2 through ingestion can occur by touching the Products with subsequent touching of the user's hand  
3 to mouth, through hand to food to mouth contact, or through hand to cigarette to mouth contact.

4 24. Defendants have manufactured, processed, marketed, distributed, offered to sell  
5 and/or sold the Products in California since at least July 18, 2019. The Products continue to be  
6 distributed and sold in California without the requisite warning information.

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

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

16 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

28



1 of exposure through ingestion can occur by touching the Products with subsequent touching of the  
2 user's hand to mouth, through hand to food to mouth contact, or through hand to cigarette to mouth  
3 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 Products 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 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  
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per violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: July 7, 2020

BRODSKY & SMITH, LLC

By:   
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
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ATTORNEY FOR (Name): ANTHONY FERREIRO

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JUL 08 2020

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
STREET ADDRESS: 400 McAllister St.  
MAILING ADDRESS  
CITY AND ZIP CODE: San Francisco CA 94102  
BRANCH NAME:

CLERK OF THE COURT  
BY: ANNA L. TORRES  
Deputy Clerk

CASE NAME:  
ANTHONY FERREIRO v. AMERICAN CREW, INC., et al.

CIVIL CASE COVER SHEET  
 Unlimited (Amount demanded exceeds \$25,000)  
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation  
 Counter  Joinder  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CGC-20-585325  
JUDGE:  
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:  
Auto Tort:  Auto (22),  Uninsured motorist (46)  
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort:  Asbestos (04),  Product liability (24),  Medical malpractice (45),  Other PI/PD/WD (23)  
Non-PI/PD/WD (Other) Tort:  Business tort/unfair business practice (07),  Civil rights (08),  Defamation (13),  Fraud (16),  Intellectual property (19),  Professional negligence (25),  Other non-PI/PD/WD tort (35),  Employment:  Wrongful termination (36),  Other employment (15)  
Contract:  Breach of contract/warranty (06),  Rule 3.740 collections (09),  Other collections (09),  Insurance coverage (18),  Other contract (37)  
Real Property:  Eminent domain/Inverse condemnation (14),  Wrongful eviction (33),  Other real property (26)  
Unlawful Detainer:  Commercial (31),  Residential (32),  Drugs (38)  
Judicial Review:  Asset forfeiture (05),  Petition re: arbitration award (11),  Writ of mandate (02),  Other judicial review (39)  
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403):  Antitrust/Trade regulation (03),  Construction defect (10),  Mass tort (40),  Securities litigation (28),  Environmental/Toxic tort (30),  Insurance coverage claims arising from the above listed provisionally complex case types (41)  
Enforcement of Judgment:  Enforcement of judgment (20)  
Miscellaneous Civil Complaint:  RICO (27),  Other complaint (not specified above) (42)  
Miscellaneous Civil Petition:  Partnership and corporate governance (21),  Other petition (not specified above) (43)

- 2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:  
a.  Large number of separately represented parties d.  Large number of witnesses  
b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
c.  Substantial amount of documentary evidence f.  Substantial postjudgment judicial supervision  
3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive  
4. Number of causes of action (specify): 1  
5. This case  is  is not a class action suit.  
6. If there are any known related cases, file and serve a notice of related case. (You may use Form CM-015.)

Date: July 7, 2020  
Evan J. Smith (SBN 242352)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY) BY FAX

NOTICE  
• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.  
• File this cover sheet in addition to any cover sheet required by local court rule.  
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.  
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)</b>
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	Contract/Warranty/Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Collections (e.g., money owed, open book, accounts) (09)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Product Liability (not asbestos or toxic/environmental) (24)	Collection Case—Seller Plaintiff	<b>Enforcement of Judgment</b>
Medical Malpractice (45)	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Medical Malpractice—Physicians & Surgeons	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Auto Subrogation	Confession of Judgment (non-domestic relations)
Other PI/PD/WD (23)	Other Coverage	Sister State Judgment
Premises Liability (e.g., slip and fall)	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Other Contract Dispute	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	<b>Real Property</b>	<b>Miscellaneous Civil Complaint</b>
Other PI/PD/WD	Eminent Domain/Inverse Condemnation (14)	RICO (27)
<b>Non-PI/PD/WD (Other) Tort</b>	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Business Tort/Unfair Business Practice (07)	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Defamation (e.g., slander, libel) (13)	Mortgage Foreclosure	Mechanics Lien
Fraud (16)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Intellectual Property (19)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint
Professional Negligence (25)	<b>Unlawful Detainer</b>	<b>Miscellaneous Civil Petition</b>
Legal Malpractice	Commercial (31)	Partnership and Corporate Governance (21)
Other Professional Malpractice (not medical or legal)	Residential (32)	Other Petition (not specified above) (43)
Other Non-PI/PD/WD Tort (35)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Civil Harassment
<b>Employment</b>	<b>Judicial Review</b>	Workplace Violence
Wrongful Termination (36)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Employment (15)	Petition Re: Arbitration Award (11)	Election Contest
	Writ of Mandate (02)	Petition for Name Change
	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	