

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

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Attorneys for Plaintiff,

Consumer Protection Group, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER PROTECTION GROUP,
LLC, in the public interest,

Plaintiff,

v.

PETCO ANIMAL SUPPLIES STORES,
INC., a Delaware Corporation;

And DOES 1 - 20

Defendants.

CASE NO. **20STCV18680**

**PLAINTIFF CONSUMER
PROTECTION GROUP, LLC'S
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.*)

UNLIMITED CIVIL
(Demand exceeds \$25,000)

Plaintiff CONSUMER PROTECTION GROUP, LLC alleges a cause of action against
Defendant PETCO ANIMAL SUPPLIES STORES, INC.

THE PARTIES

1. Plaintiff, CONSUMER PROTECTION GROUP LLC ("Plaintiff" or "CPG"), is
an organization qualified to do business in the State of California. CPG is a person within the
meaning of Health and Safety Code section 25249.11, subdivision (a). CPG, acting as a private

1 attorney general, brings this action in the public interest as defined under Health and Safety
2 Code section 25249.7, subdivision (d).

3 2. Defendant, PETCO ANIMAL SUPPLIES STORES, INC. ("PETCO") is a
4 Delaware Corporation doing business in California at all relevant times herein.

5 3. Plaintiff is presently unaware of the true names and capacities of Defendants
6 DOES 1-20, and therefore sues these Defendants by such fictitious names.

7 4. At all times mentioned herein, the term "Defendants" shall include PETCO and
8 DOES 1 - 20

9 5. Plaintiff is informed and believes, and thereon alleges that Defendants at all
10 times mentioned herein has conducted business within the State of California.

11 6. Upon information and belief, at all times relevant to this action, Defendants was
12 an agent, servant, or employee of the Defendants. In conducting the activities alleged in this
13 Complaint, Defendants was acting within the course and scope of this agency, service, or
14 employment, and was acting with the consent, permission, and authorization of the Defendants.

15 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times the
16 Defendants was a person doing business within the meaning of Health and Safety Code section
17 25249.11, subdivision (b), and that the Defendants had ten (10) or more employees at all
18 relevant times.

19 **JURISDICTION**

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

25 9. This Court has jurisdiction over Defendants named herein because Defendants
26 either resides or is located in this State or are foreign corporations authorized to do business in
27 California, are registered with the California Secretary of State, or who do sufficient business
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1 in California, have sufficient minimum contacts with California, or otherwise intentionally avail
2 themselves of the markets within California through their manufacture, distribution, promotion,
3 marketing, or sale of their products within California to render the exercise of jurisdiction by
4 the California courts permissible under traditional notions of fair play and substantial justice.

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

9 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

3 14. Proposition 65 provides that any person "violating or threatening to violate" the
4 statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
5 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial
6 probability that a violation will occur." *Health & Safety Code* § 25249.11(e). Defendants is
7 also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil
8 action. *Health & Safety Code* § 25249.7(b).

9 15. On January 1, 1988, the Governor of California added Di(2-ethylhexyl)
10 phthalate ("DEHP") to the list of chemicals known to the state to cause cancer. Thereafter, on
11 October 24, 2003, the Governor of California added DEHP to the list of chemicals known to
12 the state to cause developmental toxicity and male reproductive toxicity.

13 16. Plaintiff identified certain practices of manufacturers and distributors of
14 products bearing DEHP, exposing, knowingly, and intentionally, persons in California to said
15 Proposition 65-listed chemical without first providing clear and reasonable warnings to the
16 exposed persons prior to the time of exposure. Plaintiff later learned that Defendants has
17 engaged in such practice.

18 **SATISFACTION OF PRIOR NOTICE**

19 17. On or about August 13, 2019, Plaintiff gave notice of alleged violations of
20 Health and Safety Code section 25249.6, concerning consumer product exposures, subject to a
21 private action to PETCO, Gooby and to the California Attorney General, County District
22 Attorneys, and City Attorneys for each County containing a population of at least 750,000
23 people in whose jurisdiction the violations allegedly occurred, concerning pet accessories,
24 namely a Comfort X- Harness ("Harness") containing DEHP.

25 18. Before sending the notice of alleged violations, Plaintiff investigated the
26 consumer products involved, the likelihood that such products would cause users to suffer
27 significant exposures to DEHP, and the corporate structure of the Defendants.

1 19. Plaintiff's notice of alleged violations included a Certificate of Merit executed
2 by the attorney for the noticing party, CPG. The Certificate of Merit stated that the attorney for
3 Plaintiff who executed the certificate had consulted with at least one person with relevant and
4 appropriate expertise who reviewed data regarding the exposures to DEHP, the subject
5 Proposition 65-listed chemicals of this action. Based on that information, the attorney for
6 Plaintiff who executed the Certificate of Merit believed there was a reasonable and meritorious
7 case for this private action. The attorney for Plaintiff attached to the Certificate of Merit served
8 on the Attorney General the confidential factual information sufficient to establish the basis of
9 the Certificate of Merit.

10 20. Plaintiff's notice of alleged violation also included a Certificate of Service and a
11 document titled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65)
12 A Summary." *Health & Safety Code* § 25249.7(d).

13 21. Plaintiff is commencing this action more than sixty (60) days from the dates that
14 Plaintiff gave notices of the alleged violation to PETCO, Gooby and the public prosecutors
15 referenced in Paragraphs 17.

16 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney
17 General, nor any applicable district attorney or city attorney has commenced and is diligently
18 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER PROTECTION GROUP, LLC against PETCO ANIMAL
3 SUPPLIES STORES, INC., and DOES 1 TO 20 for Violations of Proposition 65, The Safe
4 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et*
5 *seq.*))

6 **PET ACCESSORIES – COMFORT X- HARNESS**
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8 23. Plaintiff repeats and incorporates by reference paragraphs 1 through 22 of this
9 complaint as though fully set forth herein. The Defendants are, and at all times mentioned
10 herein was a manufacturer and/or distributor of the Harness.

11 24. Plaintiff is informed, believes, and thereon alleges that the Harness contains
12 DEHP.

13 25. Defendants knew or should have known that DEHP has been identified by the
14 State of California as a chemical known to cause Cancer, developmental toxicity, female
15 reproductive toxicity, and male reproductive toxicity and therefore was subject to Proposition
16 65 warning requirements. Defendants was also informed of the presence of DEHP in the
17 Harness within Plaintiff's notice of alleged violations further discussed above at
18 Paragraph 18.

19 26. Plaintiff's allegations regarding the Harness concerns "[c]onsumer products
20 exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage,
21 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that
22 results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b). The Harness
23 is a consumer product, and, as mentioned herein, exposures to DEHP took place as a result of
24 such normal and foreseeable consumption and use.

25 27. Plaintiff is informed, believes, and thereon alleges that between August 19, 2016
26 and the present, Defendants knowingly and intentionally exposed California consumers and
27 users of the Harness, which Defendants manufactured, distributed, or sold as mentioned above,
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1 to DEHP, without first providing any type of clear and reasonable warning of such to the
2 exposed persons before the time of exposure. Defendants have distributed and sold the Harness
3 in California. Defendants knows and intend that California consumers will use and consume
4 the Harness, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

5 28. The principal routes of exposure with regard to the Harness are and were through
6 dermal contact and ingestion. Persons sustain exposures by handling or otherwise using the
7 Harness with bare skin, without wearing gloves, or by touching bare skin or mucous membranes
8 with the Harness after handling the Harness as well as through direct and indirect hand to mouth
9 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane,
10 or breathing in particulate matter dispersed from the Harness.

11 29. Plaintiff is informed, believes, and thereon alleges that each of Defendants'
12 violations of Proposition 65 as to the Harness have been ongoing and continuous to the date of
13 the signing of this complaint, as Defendants engaged and continue to engage in conduct which
14 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
15 promotion, and sale of the Harness, so that a separate and distinct violation of Proposition 65
16 occurred each and every time a person was exposed to DEHP by the Harness as mentioned
17 herein.

18 30. Plaintiff is informed, believes, and thereon alleges that each violation of
19 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that
20 the violations alleged herein will continue to occur into the future.

21 31. Based on the allegations herein, Defendants is liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to DEHP from the Harness pursuant to Health and
23 Safety Code section 25249.7(b).

24 32. In the absence of equitable relief, the general public will continue to be
25 involuntarily exposed to Harness that is contained in the Harness, creating a substantial risk of
26 irreparable harm. Thus, by committing the acts alleged herein, Defendants has caused
27 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

1 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein
2 prior to filing this Complaint.


3 **PRAYER FOR RELIEF**

4 Plaintiff demands against the Defendants as follows:

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

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13 Dated: May 15, 2020

BLACKSTONE LAW, APC

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16 By: 
17 Jonathan M. Genish
18 Attorneys for Plaintiff,
19 Consumer Protection Group, LLC
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