

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: David Cowan

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Attorneys for Plaintiff,

CONSUMER ADVOCACY GROUP, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

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

Plaintiff,

v.

NORDSTROM, INC., a Washington  
Corporation;  
NORDSTROM RACK HQ, a business entity  
form unknown;  
and DOES 1-20,

Defendants.

CASE NO. **20STCV22602**

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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action against  
Defendants NORDSTROM, INC., NORDSTROM RACK HQ, and DOES 1-20 as follows:

**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 NORDSTROM, INC. (“NORDSTROM”) is a Washington Corporation doing business in the State of California at all relevant times herein.
3. Defendant NORDSTROM RACK, HQ (“RACK”) is a business entity form unknown doing business in the State of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, 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.
5. At all times mentioned herein, the term “Defendants” includes NORDSTROM, RACK, and DOES 1-20.
6. 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.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, 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 the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively,

1 each of the Defendants aided, conspired with and/or facilitated the alleged wrongful  
2 conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

- 13 10. This Court has jurisdiction over Defendants named herein because Defendants either  
14 reside or are located in this State or are foreign corporations authorized to do business in  
15 California, are registered with the California Secretary of State, or who do sufficient  
16 business in California, have sufficient minimum contacts with California, or otherwise  
17 intentionally avail themselves of the markets within California through their manufacture,  
18 distribution, promotion, marketing, or sale of their products within California to render  
19 the exercise of jurisdiction by the California courts permissible under traditional notions  
20 of fair play and substantial justice.

- 21 11. Venue is proper in the County of Los Angeles because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
23 because Defendants conducted, and continue to conduct, business in the County of Los  
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

- 26 12. In 1986, California voters approved an initiative to address growing concerns about  
27 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.

13. 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.

14. 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).

15. 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).

16. Plaintiff identified certain practices of manufacturers and distributors of Lunch bags and Cooler Bags of exposing, knowingly and intentionally, persons in California to Di(2-ethylhexyl)phthalate ("DEHP") of such products without first providing clear and

1 reasonable warnings of such to the exposed persons prior to the time of exposure.

2 Plaintiff later discerned that Defendants engaged in such practice.

3 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
4 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to  
5 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after  
6 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP  
7 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

8 18. On October 24, 2003, the Governor of California added DEHP to the list of chemicals  
9 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*  
10 *Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and  
11 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to  
12 the State to cause developmental and male reproductive toxicity, DEHP became fully  
13 subject to Proposition 65 warning requirements and discharge prohibitions.

14 **SATISFACTION OF PRIOR NOTICE**

15 19. On or about August 12, 2019, Plaintiff gave notice of alleged violations of Health and  
16 Safety Code Section 25249.6, concerning consumer products exposures, subject to a  
17 private action to NORDSTROM, RACK, and to the California Attorney General, County  
18 District Attorneys, and City Attorneys for each city containing a population of at least  
19 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
20 Lunch Bag with PVC/Plastic Components.

21 20. On or about September 17, 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 NORDSTROM, RACK, 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  
26 Plastic Cooler Bag.

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

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

12 23. Plaintiff's notices of alleged violations also included Certificates of Service and a  
13 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
14 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

15 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
16 gave notice of the alleged violations to NORDSTROM, RACK, and the public  
17 prosecutors referenced in Paragraphs 19-20.

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

### **FIRST CAUSE OF ACTION**

22 **(By CONSUMER ADVOCACY GROUP, INC. and against NORDSTROM, RACK,**  
23 **and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and**  
24 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

### **Lunch Bag**

25 26. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint  
26 as though fully set forth herein.

27 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,

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distributor, promoter, or retailer of Lunch Bag with PVC/Plastic Components including but not limited to: “REFRESH ME UP!,” “myxx,” “NORDSTROM rack;” “8234BG;” “PINK;” “6 11193 02921 3;” “Made in China;” “RN # 154653”; “SP Home: “Cooler Bag Shell PVC: P” (“Lunch Bags).

28. Lunch Bags contain DEHP.

29. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer and toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in Lunch Bags within Plaintiff's notice of alleged violations further discussed above at Paragraph 19.

30. Plaintiff's allegations regarding Lunch Bags concerns “[c]onsumer products exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, 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, § 25602(b)*. Lunch Bags are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable use.

31. Plaintiff is informed, believes, and thereon alleges that between August 12, 2016 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Lunch Bags, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Lunch Bags in California. Defendants know and intend that California consumers will use Lunch Bags, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

32. The principal routes of exposure are through dermal contact, ingestion and inhalation. Persons sustain exposures by using, handling, or carrying Lunch Bags without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling Lunch Bags, as well as through direct and indirect

1 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter  
2 emanating from Lunch Bags during use, as well as through environmental mediums that  
3 carry the DEHP once contained within the Lunch Bags.

4 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
5 Proposition 65 as to Lunch Bags have been ongoing and continuous, as Defendants  
6 engaged and continue to engage in conduct which violates Health and Safety Code  
7 Section 25249.6, including the manufacture, distribution, promotion, and sale of Lunch  
8 Bags, so that a separate and distinct violation of Proposition 65 occurred each and every  
9 time a person was exposed to DEHP by Lunch Bags as mentioned herein.

10 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 35. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to DEHP from Lunch Bags, pursuant to Health  
15 and Safety Code Section 25249.7(b).

16 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
17 filing this Complaint.

## 18 **SECOND CAUSE OF ACTION**

19 **(By CONSUMER ADVOCACY GROUP, INC. and against NORDSTROM, RACK,**  
20 **and DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and**  
21 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

### 22 **Cooler Bags**

23 37. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 of this complaint  
24 as though fully set forth herein.

25 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
26 distributor, promoter, or retailer of Plastic Cooler Bag including but not limited to:  
27 "myxx;" "NORDSTROM rack;" "8233BG;" "TURQ/WHITE;" "6 11193 02920 6;"  
28 "Made in China;" "RN# 154653" ("Cooler Bags).



39. Cooler Bags contain DEHP.

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

41. Plaintiff's allegations regarding Cooler Bags concerns "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, 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, § 25602(b). Cooler Bags are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable use.

42. Plaintiff is informed, believes, and thereon alleges that between September 17, 2016 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Cooler Bags, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Cooler Bags in California. Defendants know and intend that California consumers will use Lunch Bags, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

43. The principal routes of exposure are through dermal contact, ingestion and inhalation. Persons sustain exposures by using, handling, or carrying Cooler Bags without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling Cooler Bags, as well as through direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate matter emanating from Cooler Bags during use, as well as through environmental mediums that carry the DEHP once contained within the Cooler Bags.

1 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
2 Proposition 65 as to Cooler Bags have been ongoing and continuous, as Defendants  
3 engaged and continue to engage in conduct which violates Health and Safety Code  
4 Section 25249.6, including the manufacture, distribution, promotion, and sale of Cooler  
5 Bags, so that a separate and distinct violation of Proposition 65 occurred each and every  
6 time a person was exposed to DEHP by Cooler Bags as mentioned herein.

7 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
8 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
9 violations alleged herein will continue to occur into the future.

10 46. Based on the allegations herein, Defendants are liable for civil penalties of up to  
11 \$2,500.00 per day per individual exposure to DEHP from Cooler Bags, pursuant to  
12 Health and Safety Code Section 25249.7(b).

13 47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
14 filing this Complaint.

15 **PRAYER FOR RELIEF**

16 Plaintiff demands against each of the Defendants as follows:

- 17 1. A permanent injunction mandating Proposition 65-compliant warnings;  
18 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);  
19 3. Costs of suit;  
20 4. Reasonable attorney fees and costs; and  
21 5. Any further relief that the court may deem just and equitable.

22  
23 Dated: June 12, 2020

YEROUSHALMI & YEROUSHALMI

24  
25  
26 BY: 

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
CONSUMER ADVOCACY GROUP, INC.