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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.

URBAN OUTFITTERS, INC., a
Philadelphia Corporation,

And DOES 1 - 20

Defendants.

CASE NO. **21STCV08379**

**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 URBAN OUTFITTERS, 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, URBAN OUTFITTERS, INC. (“Urban”) is a business entity form
4 unknown, doing business in the State of California at all relative times herein. Plaintiff will
5 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
6 informed, believes, and thereon alleges that each fictitiously named Defendants is responsible
7 in some manner for the occurrences herein alleged and the damages caused thereby.

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

10 4. At all times mentioned herein, the term “Defendants” shall include Urban and
11 DOES 1 - 20

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

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

18 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times the
19 Defendants was a person doing business within the meaning of Health and Safety Code section
20 25249.11, subdivision (b), and that the Defendants had ten (10) or more employees at all
21 relevant times.

22 **JURISDICTION**

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

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

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

12 **BACKGROUND AND PRELIMINARY FACTS**

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

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

26 13. All businesses with ten (10) or more employees that operate or sell products in
27 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
28 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking

1 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable”
2 warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed
3 chemical (*Health & Safety Code* § 25249.6).

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

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

14 16. On December 20, 2013, the Governor of California added Diisononyl phthalate
15 (“DINP”) to the list of chemicals known to the State to cause cancer.

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

21 **SATISFACTION OF PRIOR NOTICE**

22 18. On or about August 14, 2019, Plaintiff gave notice of alleged violations of
23 Health and Safety Code section 25249.6, concerning consumer product exposures, subject to a
24 private action to Urban and to the California Attorney General, County District Attorneys, and
25 City Attorneys for each County containing a population of at least 750,000 people in whose
26 jurisdiction the violations allegedly occurred, concerning a Journal Snap Binder Planner
27 (“Journal”) containing DEHP and DINP.

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

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

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

16 22. Plaintiff is commencing this action more than sixty (60) days from the dates that
17 Plaintiff gave notices of the alleged violation to GC and the public prosecutors referenced in
18 Paragraphs 18.

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

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1 **FIRST CAUSE OF ACTION**

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

5 Journal Snap Binder Planner

6 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this
7 complaint as though fully set forth herein. The Defendants is, and at all times mentioned herein
8 was a manufacturer of the Journal.

9 25. Plaintiff is informed, believes, and thereon alleges that the Journal contains
10 DEHP and DINP.

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

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

23 28. Plaintiff is informed, believes, and thereon alleges that between August 14, 2016
24 and the present, Defendants knowingly and intentionally exposed California consumers and
25 users of the Journal, which Defendants manufactured, distributed, or sold as mentioned above,
26 to DEHP and DINP, without first providing any type of clear and reasonable warning of such
27 to the exposed persons before the time of exposure. Defendants has distributed and sold the
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1 Journal in California. Defendants knows and intend that California consumers will use and
2 consume the Journal, thereby exposing them to DEHP and DINP. Defendants thereby violated
3 Proposition 65.

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

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

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

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

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

27 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein
28 prior to filing this Complaint.

1 **PRAYER FOR RELIEF**

2 Plaintiff demands against the Defendants as follows:


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

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11 Dated: March 3, 2021

BLACKSTONE LAW, APC

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14 By: _____

15 Jonathan M. Genish

16 Attorneys for Plaintiff,

17 Consumer Protection Group, LLC

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