

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

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yeroushalmi.com

3 **YEROUSHALMI & YEROUSHALMI***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 OLIVET INTERNATIONAL, INC., a
17 California Corporation;
18 WALMART INC., a Delaware Corporation;
19 WALMART APOLLO, LLC., a Delaware
20 Limited Liability Company;
21 WALMART.COM, INC., a Delaware
22 Corporation
23 and DOES 1-10,

24 Defendants.

CASE NO. 20STCV07514

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)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 defendants OLIVET INTERNATIONAL, INC.; WALMART INC.; WALMART APOLLO,
3 LLC.; WALMART.COM, INC.; and DOES 1-10 as follows:

4
5 **THE PARTIES**

- 6 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
7 organization qualified to do business in the State of California. CAG is a person within
8 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
9 as a private attorney general, brings this action in the public interest as defined under
10 Health and Safety Code Section 25249.7, subdivision (d).
- 11 2. Defendant OLIVET INTERNATIONAL, INC., ("OLIVET") is a California Corporation;
12 doing business in the State of California at all relevant times herein.
- 13 1. Defendant WALMART INC., ("WALMART") is a Delaware Corporation doing business
14 in the State of California at all relevant times herein.
- 15 2. Defendant WALMART APOLLO, LLC ("APOLLO") is a Delaware Limited Liability
16 Company; doing business in the State of California at all relevant times herein.
- 17 3. Defendant WALMART.COM, INC. ("WALMART.COM") is a Delaware Corporation
18 doing business in the State of California at all relevant times herein.
- 19 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
20 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
21 Complaint to allege their true names and capacities when ascertained. Plaintiff is
22 informed, believes, and thereon alleges that each fictitiously named defendant is
23 responsible in some manner for the occurrences herein alleged and the damages caused
24 thereby.
- 25 5. At all times mentioned herein, the term "Defendants" includes OLIVET, WALMART,
26 APOLLO, WALMART.COM, and DOES 1-10.
- 27 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all

1 times mentioned herein have conducted business within the State of California.

- 2 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
3 including DOES 1-10, was an agent, servant, or employee of each of the other
4 Defendants. In conducting the activities alleged in this Complaint, each of the Defendants
5 was acting within the course and scope of this agency, service, or employment, and was
6 acting with the consent, permission, and authorization of each of the other Defendants.
7 All actions of each of the Defendants alleged in this Complaint were ratified and
8 approved by every other Defendant or their officers or managing agents. Alternatively,
9 each of the Defendants aided, conspired with and/or facilitated the alleged wrongful
10 conduct of each of the other Defendants.
- 11 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
12 Defendants was a person doing business within the meaning of Health and Safety Code
13 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
14 employees at all relevant times.

15 **JURISDICTION**

- 16 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
17 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
18 those given by statute to other trial courts. This Court has jurisdiction over this action
19 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
20 violations of Proposition 65 in any Court of competent jurisdiction.
- 21 10. This Court has jurisdiction over Defendants named herein because Defendants either
22 reside or are located in this State or are foreign corporations authorized to do business in
23 California, are registered with the California Secretary of State, or who do sufficient
24 business in California, have sufficient minimum contacts with California, or otherwise
25 intentionally avail themselves of the markets within California through their manufacture,
26 distribution, promotion, marketing, or sale of their products within California to render
27 the exercise of jurisdiction by the California courts permissible under traditional notions

1 of fair play and substantial justice.

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

6 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

- 27 15. Proposition 65 provides that any person "violating or threatening to violate" the statute

1 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

2 "Threaten to violate" means "to create a condition in which there is a substantial
3 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

4 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
5 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

6 16. Plaintiff identified certain practices of manufacturers and distributors of Plastic Pet
7 Placemat products of exposing, knowingly and intentionally, persons in California to
8 Diisononyl Phthalate ("DINP") of such products without first providing clear and
9 reasonable warnings of such to the exposed persons prior to the time of exposure.
10 Plaintiff later discerned that Defendants engaged in such practice.

11 17. On December 20, 2013, the Governor of California added DINP to the list of chemicals
12 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
13 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
14 addition of DINP to the list of chemicals known to the State to cause cancer, DINP
15 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 18. On or about October 24, 2019, Plaintiff gave notice of alleged violations of Health and
18 Safety Code Section 25249.6, concerning consumer products exposures subject to a
19 private action to OLIVET, WALMART, APOLLO, WALMART.COM, and to the
20 California Attorney General, County District Attorneys, and City Attorneys for each city
21 containing a population of at least 750,000 people in whose jurisdictions the violations
22 allegedly occurred, concerning the Plastic Pet Placemats.

23 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
24 products involved, the likelihood that such products would cause users to suffer
25 significant exposures to DINP, and the corporate structure of each of the Defendants.

26 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
27 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for

1 Plaintiff who executed the certificate had consulted with at least one person with relevant
2 and appropriate expertise who reviewed data regarding the exposures to DINP, the
3 subject Proposition 65-listed chemical of this action. Based on that information, the
4 attorney for Plaintiff who executed the Certificate of Merit believed there was a
5 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
6 to the Certificate of Merit served on the Attorney General the confidential factual
7 information sufficient to establish the basis of the Certificate of Merit.

8 21. Plaintiff's notice of alleged violations also included a Certificate of Service and a
9 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
10 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

11 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
12 gave notice of the alleged violations to OLIVET, WALMART, APOLLO,
13 WALMART.COM, and the public prosecutors referenced in Paragraph 18.

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

17 FIRST CAUSE OF ACTION

18 (By CONSUMER ADVOCACY GROUP, INC. and against OLIVET, WALMART,
19 APOLLO, WALMART.COM, and DOES 1-10 for Violations of Proposition 65, The
20 Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§
25249.5, *et seq.*))

21 Pet Placemats

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

24 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Plastic Pet Placemats including but not limited
26 "WORLD PET BY OLIVET INTERNATIONAL INC.;" "nature print PET
27 PLACEMAT;" "Product Dimension: 17.63" W x 11.75" H;" "PT00127;"

28 "Manufactured by OLIVET INTERNATIONAL, INC. MIRA LOMA, CALIFORNIA

1 91752;" "www.olivetintl.com;" "MADE IN CHINA;" "DESIGNED IN THE U.S.A;" "6
2 18842 30779 1" ("Placemats"),.

3 26. Placemats contains DINP.

4 27. Defendants knew or should have known that DINP has been identified by the State of
5 California as a chemical known to cause cancer and therefore was subject to Proposition
6 65 warning requirements. Defendants were also informed of the presence of DINP in
7 Placemats within Plaintiff's notice of alleged violations further discussed above at
8 Paragraph 18.

9 28. Plaintiff's allegations regarding Placemats concern "[c]onsumer products exposure[s],"
10 which "is an exposure that results from a person's acquisition, purchase, storage,
11 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
12 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).
13 Placemats are consumer products, and, as mentioned herein, exposures to DINP took
14 place as a result of such normal and foreseeable consumption and use.

15 29. Plaintiff is informed, believes, and thereon alleges that between October 24, 2016 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Placemats, which Defendants manufactured, distributed, or sold
18 as mentioned above, to DINP, without first providing any type of clear and reasonable
19 warning of such to the exposed persons before the time of exposure. Defendants have
20 distributed and sold Placemats in California. Defendants know and intend that California
21 consumers will use Placemats thereby exposing them to DINP. Defendants thereby
22 violated Proposition 65.

23 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.
24 Persons sustain exposures by using, carrying, cleaning, or handling Placemats without
25 wearing gloves or any other personal protective equipment, or by touching bare skin or
26 mucous membranes with gloves after handling Placemats, as well as through direct and
27 indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or

breathing in particulate matter dispersed once contained within Placemats.

31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 as to Placemats have been ongoing and continuous, as Defendants engaged and continue to engage in conduct which violates Health and Safety Code Section 25249.6, including the manufacture, distribution, promotion, and sale of Product, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to DINP by Placemats as mentioned herein.

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

33. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to DINP from Placemats, pursuant to Health and Safety Code Section 25249.7(b).

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

PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: 2-24-20, 2020

YEROUSHALMI & YEROUSHALMI

BY: 

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