

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Keosian

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8 Attorneys for Plaintiff,
9 CONSUMER ADVOCACY GROUP, INC.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 WALGREEN CO., an Illinois Corporation;
19 WALGREEN NATIONAL
20 CORPORATION, an Illinois Corporation;
21 and DOES 1-10,

22 Defendants.

CASE NO. **20STCV16706**

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 one cause of action against
2 defendants WALGREEN CO., WALGREEN NATIONAL CORPORATION, and DOES 1-10
3 as follows:

4 **THE PARTIES**

- 5 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
6 organization qualified to do business in the State of California. CAG is a person within
7 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
8 as a private attorney general, brings this action in the public interest as defined under
9 Health and Safety Code Section 25249.7, subdivision (d).
- 10 2. Defendant WALGREEN CO. (“WALGREEN”) is an Illinois Corporation doing
11 business in the State of California at all relevant times herein.
- 12 3. Defendant WALGREEN NATIONAL CORPORATION (“WALGREEN CORP”) is an
13 Illinois Corporation doing business in the State of California at all relevant times herein.
- 14 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-
15 10, and therefore sues these defendants by such fictitious names. Plaintiff will amend
16 this Complaint to allege their true names and capacities when ascertained. Plaintiff is
17 informed, believes, and thereon alleges that each fictitiously named defendant is
18 responsible in some manner for the occurrences herein alleged and the damages caused
19 thereby.
- 20 5. At all times mentioned herein, the term “Defendants” includes WALGREEN,
21 WALGREEN CORP, and DOES 1-10.
- 22 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
23 times mentioned herein have conducted business within the State of California.
- 24 7. Upon information and belief, at all times relevant to this action, the Defendants,
25 including DOES 1-10, was an agent, servant, or employee of each of the other
26 Defendant. In conducting the activities alleged in this Complaint, each of the
27 Defendants was acting within the course and scope of this agency, service, or
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1 employment, and was acting with the consent, permission, and authorization of each of
2 the other Defendants. All actions of each of the Defendants alleged in this Complaint
3 were ratified and approved by every other Defendant or their officers or managing
4 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
5 the alleged wrongful conduct of each of the other Defendants.

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

10 **JURISDICTION**

- 11 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
12 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
13 those given by statute to other trial courts. This Court has jurisdiction over this action
14 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
15 violations of Proposition 65 in any Court of competent jurisdiction.
- 16 10. This Court has jurisdiction over Defendants named herein because Defendants either
17 reside or are located in this State or are foreign corporations authorized to do business
18 in California, are registered with the California Secretary of State, or who do sufficient
19 business in California, have sufficient minimum contacts with California, or otherwise
20 intentionally avail themselves of the markets within California through their
21 manufacture, distribution, promotion, marketing, or sale of their products within
22 California to render the exercise of jurisdiction by the California courts permissible
23 under traditional notions of fair play and substantial justice.
- 24 11. Venue is proper in the County of Los Angeles because one or more of the instances of
25 wrongful conduct occurred, and continues to occur, in the County of Los Angeles
26 and/or because Defendants conducted, and continue to conduct, business in the County
27 of Los Angeles with respect to the consumer product that is the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

22 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
24 25249.7. "Threaten to violate" means "to create a condition in which there is a
25 substantial probability that a violation will occur." *Health & Safety Code* §
26 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day
27 per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 16. Plaintiff identified certain practices of manufacturers and distributors of Plastic Beach
2 Blanket Covers of exposing, knowingly and intentionally, persons in California to Bis
3 (2-ethylhexyl) phthalate (“DEHP”) in such products without first providing clear and
4 reasonable warnings of such to the exposed persons prior to the time of exposure.

5 Plaintiff later discerned that Defendants engaged in such practice.

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

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

19 **SATISFACTION OF PRIOR NOTICE**

20 19. On or about October 23, 2019 Plaintiff gave notice of alleged violations of Health and
21 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
22 private action to WALGREEN, WALGREEN CORP, and to the California Attorney
23 General, County District Attorneys, and City Attorneys for each city containing a
24 population of at least 750,000 people in whose jurisdictions the violations allegedly
25 occurred, concerning the Plastic Beach Blanket Cover with Plastic Carrying Cases.

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

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

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

16 23. Plaintiff is commencing this action more than sixty (60) days from the dates that
17 Plaintiff gave notice of the alleged violations to WALGREEN, WALGREEN CORP,
18 and the public prosecutors referenced in Paragraph 19.

19 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General,
20 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 ADVOCACY GROUP, INC. and against WALGREEN,**
3 **WALGREEN CORP, and DOES 1-10 for Violations of Proposition 65, The Safe**
4 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§***
5 **25249.5, *et seq.*))**

6 **Beach Blanket Covers**

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

9 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Beach Blanket Covers (“Blankets”), including but
11 not limited to: “BIGMOUTH INC;” “giant-sized pineapple BEACH BLANKET;”
12 “Designed in the USA;” “www.bigmouthinc.com;” “Made in China;” “MFG Date:
13 10H11;” “Lot No: 3838;” “Item No. BMBT-PA;” “1 88561 00015 5”

14 27. Blankets contain DEHP.

15 28. Defendants knew or should have known that DEHP has been identified by the State of
16 California as a chemical known to cause cancer, developmental, and male reproductive
17 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
18 were also informed of the presence of DEHP in Blankets within Plaintiff’s notice of
19 alleged violations further discussed above at Paragraph 19.

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

26 30. Plaintiff is informed, believes, and thereon alleges that between October 23, 2016 and
27 the present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Blankets, which Defendants manufactured, distributed, or sold
as mentioned above, to DEHP, without first providing any type of clear and reasonable

1 warning of such to the exposed persons before the time of exposure. Defendants have
2 distributed and sold Blankets in California. Defendants know and intend that California
3 consumers will use Blankets, thereby exposing them to DEHP. Defendants thereby
4 violated Proposition 65.

5 31. The principal routes of exposure were through dermal contact, inhalation, and ingestion.
6 Persons sustain exposures by using, carrying, or handling the Blankets without wearing
7 gloves or by touching bare skin or mucous membranes with or without gloves after
8 handling Blankets, as well as direct and indirect hand to mouth contact, hand to mucous
9 membrane, trans-dermal absorption, or breathing in particulate matter emanating from
10 the Blankets during use, as well as through environmental mediums that carry the
11 DEHP once contained within the Blankets.

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

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

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

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

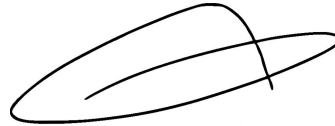
26 **PRAYER FOR RELIEF**

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

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7 Dated: April 30, 2020

YEROUSHALMI & YEROUSHALMI*

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11 Reuben Yeroushalmi
12 Attorneys for Plaintiff,
13 CONSUMER ADVOCACY GROUP, INC.
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