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**ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO**

JUL 15 2020

**CLERK OF THE COURT
ANGELICA SUNGA**
BY: _____
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 TARGET CORPORATION,

15 Defendant.

Case No.:

CGC-20-585536

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

(Violation of Health & Safety Code § 25249.5 et
seq.)

BY FAX

16 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the following
17 cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

18 1. Plaintiff brings this representative action on behalf of all California citizens to
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
20 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
21 "[n]o person in the course of doing business shall knowingly and intentionally expose any
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
23 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Color
27 Tribe fanny packs sold and/or distributed by defendant Target Corporation ("Target" or the
28 "Defendant") in California.

1 3. DEHP is a harmful chemical known to the State of California to cause cancer and
2 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known
3 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since
4 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
5 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
6 reproductive toxicity.

7 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
8 within California or sell products therein to comply with Proposition 65 regulations. Included in
9 such regulations is the requirement that businesses must label any product containing a Proposition
10 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
11 exposing any person to any such listed chemical.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
17 25249.7.

18 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
19 without a requisite exposure warning, Color Tribe fanny packs (the “Products”) that expose
20 persons to DEHP.

21 7. Defendant’s failure to warn consumers and other individuals in California of the
22 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
23 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
24 penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65
26 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

4 **PARTIES**

5 11. Plaintiff is a citizen of the State of California acting in the interest of the general
6 public to promote awareness of exposures to toxic chemicals in products sold in California and to
7 improve human health by reducing hazardous substances contained in such items. He brings this
8 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

9 12. Defendant Target, through its business, effectively imports, distributes, sells, and/or
10 offers the Products for sale or use in the State of California, or it implies by its conduct that it
11 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

12 13. Plaintiff alleges that defendant Target is a “person” in the course of doing business
13 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 14. Venue is proper in the County of San Francisco because one or more of the
16 instances of wrongful conduct occurred, and continue to occur in this county and/or because
17 Defendant conducted, and continues to conduct, business in the County of San Francisco with
18 respect to the Products.

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

24 16. This Court has jurisdiction over Defendant because Defendant is either a citizen of
25 the State of California, has sufficient minimum contacts with the State of California, is registered
26 with the California Secretary of State as foreign corporations authorized to do business in the State
27 of California, and/or has otherwise purposefully availed itself of the California market. Such
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
2 permissible with traditional notions of fair play and substantial justice.

3 **STATUTORY BACKGROUND**

4 17. The people of the State of California declared in Proposition 65 their right “[t]o be
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
6 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

7 18. To effect this goal, Proposition 65 requires that individuals be provided with a
8 “clear and reasonable warning” before being exposed to substances listed by the State of California
9 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

10 No person in the course of doing business shall knowingly and intentionally expose any
11 individual to a chemical known to the state to cause cancer or reproductive toxicity without
12 first giving clear and reasonable warning to such individual...

13 19. An exposure to a chemical in a consumer product is one “which results from a
14 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
15 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
16 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
17 shall provide a warning to any person to whom the product is sold or transferred unless the product
18 is packaged or labeled with a clear and reasonable warning.”

19 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
20 more of the following methods individually or in combination:¹

- 21 a. A warning that appears on a product’s label or other labeling.
- 22 b. Identification of the product at the retail outlet in a manner which provides
23 a warning. Identification may be through shelf labeling, signs, menus, or a combination
24 thereof.

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26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.*, as amended on August 30,
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet
3 with such conspicuousness, as compared with other words, statements, designs, or devices
4 in the label, labeling or display as to render it likely to be read and understood by an
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free
7 information services, or any other system that provides clear and reasonable warnings.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

14 **FACTUAL BACKGROUND**

15 22. On January 1, 1988, the State of California listed DEHP as a chemical known to
16 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
17 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
18 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
19 reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a
20 chemical known to the State to cause cancer and reproductive toxicity.

21 23. The consumer exposures that are the subject of this Complaint result from through
22 dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin
23 contact with the clear plastic during routine use when the Products are handled with bare hands.
24 Concentrations of DEHP can be expected to build within the Products. This DEHP can absorb to
25 the surface of the interior contents placed inside the Products that are subsequently handled, held
26 in direct contact with skin, mouthed, or ingested by the user. If the Products are stored or
27 transported in a carrier, DEHP that leaches from the Products may contaminate other articles
28 contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested

1 by the user. Finally, while mouthing of the Products does not seem likely, some amount of
2 exposure through ingestion can occur by touching the Products with subsequent touching of the
3 user's hand to mouth.

4 24. Defendant has supplied, processed, marketed, distributed, offered to sell and/or sold
5 the Products in California since at least February 26, 2020. The Products continue to be distributed
6 and sold in California without the requisite warning information.

7 25. At all times relevant to this action, Defendant has knowingly and intentionally
8 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
9 giving a clear and reasonable exposure warning to such individuals.

10 26. As a proximate result of acts by Defendant, as a person in the course of doing
11 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
12 California, including in San Francisco County, have been exposed to the Listed Chemical without
13 a clear and reasonable warning on the Products. The individuals subject to the violative exposures
14 include normal and foreseeable users, consumers and patients that use the Products, as well as all
15 others exposed to the Products.

16 **SATISFACTION OF NOTICE REQUIREMENTS**

17 27. On February 26, 2020, Plaintiff gave notice of alleged violation of Health and
18 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens
19 to DEHP contained in the Products without proper warning, subject to a private action to Defendant
20 and to the California Attorney General's office and the offices of the County District attorneys and
21 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
22 violations allegedly occurred.

23 28. The Notice complied with all procedural requirements of Proposition 65 including
24 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
25 least one person with relevant and appropriate expertise who reviewed relevant data regarding
26 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private
27 action.

1 worn, mouthed, or ingested by the user. Finally, while mouthing of the Products does not seem
2 likely, some amount of exposure through ingestion can occur by touching the Products with
3 subsequent touching of the user's hand to mouth.

4 37. Plaintiff, based on his best information and belief, avers that such exposures will
5 continue every day until clear and reasonable warnings are provided to Product purchasers and
6 users or until this known toxic chemical is removed from the Products.

7 38. Defendant has knowledge that the normal and reasonably foreseeable use of the
8 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
9 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
10 the Products to consumers in California

11 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
12 Complaint.

13 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
14 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

15 41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
16 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
19 relief:

20 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
21 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
22 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

23 B. That the court preliminarily and permanently enjoin Defendant mandating
24 Proposition 65 compliant warnings on the Product;

25 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
26 amount of \$50,000.00.

27 D. That the court grant any further relief as may be just and proper.

28 Dated: July 13, 2020

BRODSKY & SMITH, LLC

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