

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Broadbelt

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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.

WALMART INC., a Delaware Corporation;

WAL-MART.COM INC., a Delaware

Corporation; and

DOES 1-20,

Defendants.

CASE NO. **21STCV14395**

**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 WALMART, INC.; WAL-MART.COM INC. and DOES 1-20 as follows:

3 **THE PARTIES**

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

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

9 **JURISDICTION**

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

27 **BACKGROUND AND PRELIMINARY FACTS**

- 1 12. In 1986, California voters approved an initiative to address growing concerns about
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
7 from contamination, to allow consumers to make informed choices about the products
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see
9 fit.
- 10 13. Proposition 65 requires the Governor of California to publish a list of chemicals known
11 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
12 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
13 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
14 other controls that apply to Proposition 65-listed chemicals.
- 15 14. All businesses with ten (10) or more employees that operate or sell products in California
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
17 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
18 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
19 reasonable” warnings before exposing a person, knowingly and intentionally, to a
20 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 21 15. Proposition 65 provides that any person “violating or threatening to violate” the statute
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
23 25249.7. “Threaten to violate” means “to create a condition in which there is a
24 substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).
25 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
26 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
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1 16. Plaintiff identified certain practices of manufacturers and distributors of Video and
2 Audio Recorder of exposing, knowingly and intentionally, persons in California to Bis
3 (2-ethylhexyl) phthalate of such products without first providing clear and reasonable
4 warnings of such to the exposed persons prior to the time of exposure. Plaintiff later
5 discerned that Defendants engaged in such practice.

6 17. Plaintiff identified certain practices of manufacturers and distributors of Herbal
7 Supplements of exposing, knowingly and intentionally, persons in California to Lead and
8 Lead Compounds of such products without first providing clear and reasonable warnings
9 of such to the exposed persons prior to the time of exposure. Plaintiff later discerned
10 that Defendants engaged in such practice.

11 18. On January 1, 1988, the Governor of California added Bis (2-ethylhexyl) phthalate
12 (“DEHP”) to the list of chemicals known to the State to cause cancer, (*Cal. Code Regs.*
13 tit. 27, § 27001(b)) and on October 24, 2003, the Governor added DEHP to the list of
14 chemicals known to the State to cause developmental male reproductive toxicity (*Cal.*
15 *Code Regs.* tit. 27, § 27001(c)). 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 known
17 to the State to cause reproductive toxicity, DEHP became fully subject to Proposition 65
18 warning requirements and discharge prohibitions.

19 19. On October 1, 1992 the Governor of California added Lead and Lead Compounds
20 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
21 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
22 twenty (20) months after addition of Lead to the list of chemicals known to the State to
23 cause cancer, Lead became fully subject to Proposition 65 warning requirements and
24 discharge prohibitions.

25 20. On February 27, 1987, the Governor of California added Lead to the list of chemicals
26 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*
27 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and
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male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to the State to cause developmental and reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

21. Plaintiff served the following notices for alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures:

- a. On or about August 25, 2020, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to WALMART, INC., and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Video and Audio Recorder
- b. On or about November 5, 2020, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to WALMART, INC, WAL-MART.COM and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Turmeric Capsules.

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

23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the 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 DEHP, and
3 Lead the subject Proposition 65-listed chemical of this action. Based on that information,
4 the 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
6 attached to the Certificate of Merit served on the Attorney General the confidential
7 factual information sufficient to establish the basis of the Certificate of Merit.

8 24. 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 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
12 gave notice of the alleged violations to WALMART, INC., WAL-MART.COM and the
13 public prosecutors referenced in Paragraph 21.

14 26. 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 WALMART, INC.,**
19 **and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and**
20 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

21 **Auto Accessories**

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

24 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Video and Audio Recorder, including but not limited
26 to "Portable HD Video & Audio Recorder", "DashCam Pro"; "Inventel Item: DCP-
27 MC6/2; "UPC 8 58256 00337 1"; "Made in China".

28 29. Video and Audio Recorder contains DEHP.

1 30. Defendants knew or should have known that DEHP has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of DEHP in Video and Audio Recorder within Plaintiff's notice of alleged
5 violations further discussed above at Paragraph 21a.

6 31. Plaintiff's allegations regarding Video and Audio Recorder concerns "[c]onsumer
7 products exposure[s]," which "is an exposure that results from a person's acquisition,
8 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
9 or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27,
10 § 25602(b). Video and Audio Recorder is a consumer products, and, as mentioned
11 herein, exposures to DEHP took place as a result of such normal and foreseeable
12 consumption and use.

13 32. Plaintiff is informed, believes, and thereon alleges that between August 25, 2017 and the
14 present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Video and Audio Recorder, which Defendants manufactured,
16 distributed, or sold as mentioned above, to DEHP, without first providing any type of
17 clear and reasonable warning of such to the exposed persons before the time of exposure.
18 Defendants have distributed and sold Video and Audio Recorder in California.
19 Defendants know and intend that California consumers will use and consume Video and
20 Audio Recorder, thereby exposing them to DEHP. Further, Plaintiff is
21 informed, believes, and thereon alleges that Defendants are selling Video and Audio
22 Recorder under a brand or trademark that is owned or licensed by the Defendants or an
23 entity affiliated thereto; have knowingly introduced relevant chemical into Video and
24 Audio Recorder or knowingly caused relevant chemical to be created in Video and
25 Audio Recorder; have covered, obscured or altered a warning label that has been affixed
26 to Video and Audio Recorder by the manufacturer, producer, packager, importer,
27 supplier or distributor of Product; have received a notice and warning materials for
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1 exposure from Video and Audio Recorder without conspicuously posting or displaying
2 the warning materials; and/or have actual knowledge of potential exposure to relevant
3 chemical from Video and Audio Recorder. Defendants thereby violated Proposition 65.

4 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.
5 Persons sustain exposures by handling Video and Audio Recorder without wearing
6 gloves or any other personal protective equipment, or by touching bare skin or mucous
7 membranes with gloves after handling Video and Audio Recorder, as well as through
8 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in
9 particulate matter dispersed from Video and Audio Recorder.

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART, INC.,**
3 **WAL-MART.COM and DOES 11-20 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 **Herbal Supplement**

7 38. Plaintiff repeats and incorporates by reference paragraphs 1 through 37 of this complaint
8 as though fully set forth herein.

9 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Turmeric Capsules identified as “Nature’s Bounty”;
11 “Turmeric 450mg”; “60 capsules”; “Supports Antioxidant Health”; “Herbal Health”;
12 “UPC 0 74312 15417 1”; “Made in the USA.”

13 40. Turmeric Capsules contains lead and lead compounds.

14 41. Defendants knew or should have known that LEAD has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of lead and lead compounds in Turmeric Capsules within Plaintiff’s notice
18 of alleged violations further discussed above at Paragraph 21b.

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

26 43. Plaintiff is informed, believes, and thereon alleges that between November 5, 2017 and
27 the present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Turmeric Capsules, which Defendants manufactured, distributed,
or sold as mentioned above, to LEAD, without first providing any type of clear and

1 reasonable warning of such to the exposed persons before the time of exposure.
2 Defendants have distributed and sold Turmeric Capsules in California. Defendants know
3 and intend that California consumers will use and consume Turmeric Capsules, thereby
4 exposing them to lead and lead compounds. Further, Plaintiff is
5 informed, believes, and thereon alleges that Defendants are selling Turmeric Capsules
6 under a brand or trademark that is owned or licensed by the Defendants or an entity
7 affiliated thereto; have knowingly introduced relevant chemical into Turmeric Capsules
8 or knowingly caused relevant chemical to be created in Turmeric Capsules; have
9 covered, obscured or altered a warning label that has been affixed to Turmeric Capsules
10 by the manufacturer, producer, packager, importer, supplier or distributor of Turmeric
11 Capsules; have received a notice and warning materials for exposure from Turmeric
12 Capsules without conspicuously posting or displaying the warning materials; and/or have
13 actual knowledge of potential exposure to relevant chemical from Turmeric Capsules.
14 Defendants thereby violated Proposition 65.

15 44. The principal routes of exposure are through dermal contact, ingestion and inhalation.

16 Persons sustain exposures by eating and consuming Turmeric Capsules, as well as
17 through direct and indirect hand to mouth contact, hand to mucous membrane, or
18 breathing in particulate matter dispersed from Turmeric Capsules.

19 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
20 Proposition 65 as to Turmeric Capsules have been ongoing and continuous, as
21 Defendants engaged and continue to engage in conduct which violates Health and Safety
22 Code Section 25249.6, including the manufacture, distribution, promotion, and sale of
23 Turmeric Capsules, so that a separate and distinct violation of Proposition 65 occurred
24 each and every time a person was exposed to lead and lead compounds by Turmeric
25 Capsules as mentioned herein.
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1 46. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to lead and lead compounds from Turmeric
6 Capsules, pursuant to Health and Safety Code Section 25249.7(b).

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

9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

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

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17 Dated: April 15, 2021

YEROUSHALMI & YEROUSHALMI*

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