

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY SMITH
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

10/12/2021
Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 IGLOO PRODUCTS CORP., TARGET
CORPORATION,

15 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

CGC-21-595920

16 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
17 of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Igloo
28 Marine Ultra square cooler bags sold and/or distributed by defendant Igloo Products Corp.

1 (“Igloo”) and defendant Target Corporation (“Target”) (collectively, the “Defendants”) in
2 California.

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

9 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
10 within California or sell products therein to comply with Proposition 65 regulations. Included in
11 such regulations is the requirement that businesses must label any product containing a Proposition
12 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
13 exposing any person to any such listed chemical.

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
21 without a requisite exposure warning, Igloo Marine Ultra square cooler bags (the “Products”) that
22 expose persons to DEHP.

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

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

3 16. This Court has jurisdiction over Defendants because each defendant is either a
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is
5 registered with the California Secretary of State as foreign corporations authorized to do business
6 in the State of California, and/or has otherwise purposefully availed itself of the California market.
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
8 and permissible with traditional notions of fair play and substantial justice.

9 **STATUTORY BACKGROUND**

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

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

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

19 19. An exposure to a chemical in a consumer product is one “which results from a
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
23 shall provide a warning to any person to whom the product is sold or transferred unless the product
24 is packaged or labeled with a clear and reasonable warning.”

1 reproductive toxicity. In summary, the DEHP was listed under Proposition 65 as a chemical known
2 to the State to cause cancer and reproductive toxicity.

3 23. The consumer exposures that are the subject of this Complaint result from dermal
4 absorption. Users can be exposed to DEHP by dermal absorption through direct skin contact with
5 the Products when handled with bare hands. If the Products are stored or transported in a carrier,
6 DEHP that leaches from the Products may contaminate other articles contained within these closed
7 spaces are subsequently handled, worn, mouthed, or consumed. Finally, while mouthing of the
8 Products does not seem likely, some amount of exposure through ingestion can occur by touching
9 the Products with subsequent touching of the user's hand to mouth.

10 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
11 and/or sold the Products in California since at least September 16, 2020. The Products continue to
12 be distributed and sold in California without the requisite warning information.

13 25. At all times relevant to this action, Defendants have knowingly and intentionally
14 exposed users and/or consumers of the Products to DEHP without first giving a clear and
15 reasonable exposure warning to such individuals.

16 26. As a proximate result of acts by each defendant, as a person in the course of doing
17 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
18 California, including in San Francisco County, have been exposed to DEHP without a clear and
19 reasonable warning on the Products. The individuals subject to the violative exposures include
20 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
21 the Products.

22 **SATISFACTION OF NOTICE REQUIREMENTS**

23 27. On October 12, 2020, Plaintiff gave notice of alleged violation of Health and Safety
24 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
25 DEHP from use of the Products without proper warning, subject to a private action to Defendants
26 and to the California Attorney General's office and the offices of the County District attorneys and
27 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
28 violations allegedly occurred.

1 the Products are stored or transported in a carrier, DEHP that leaches from the Products may
2 contaminate other articles contained within these closed spaces are subsequently handled, worn,
3 mouthed, or consumed. Finally, while mouthing of the Products does not seem likely, some
4 amount of exposure through ingestion can occur by touching the Products with subsequent
5 touching of the user's hand to mouth.

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

9 38. Defendants have knowledge that the normal and reasonably foreseeable use of the
10 Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
11 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
12 the Products to consumers in California

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

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

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
3 relief:

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

7 B. That the court preliminarily and permanently enjoin Defendants mandating
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the
10 amount of \$50,000.00.

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

12 Dated: October 11, 2021

BRODSKY SMITH

13 By: 

14 Evan J. Smith (SBN242352)
15 Ryan P. Cardona (SBN302113)
16 9595 Wilshire Boulevard, Suite 900
17 Beverly Hills, CA 90212
18 Telephone: (877) 534-2590
19 Facsimile: (310) 247-0160

20 *Attorneys for Plaintiff*