

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

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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 TARGET CORPORATION, a Minnesota
19 Corporation;
20 and DOES 1-10,

21 Defendants.

CASE NO.

21STCV05740

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)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
23 defendants TARGET CORPORATION and DOES 1-10 as follows:
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THE PARTIES

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

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

5 **JURISDICTION**

6 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
8 those given by statute to other trial courts. This Court has jurisdiction over this action
9 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
10 violations of Proposition 65 in any Court of competent jurisdiction.

11 9. This Court has jurisdiction over Defendants named herein because Defendants either
12 reside or are located in this State or are foreign corporations authorized to do business in
13 California, are registered with the California Secretary of State, or who do sufficient
14 business in California, have sufficient minimum contacts with California, or otherwise
15 intentionally avail themselves of the markets within California through their
16 manufacture, distribution, promotion, marketing, or sale of their products within
17 California to render the exercise of jurisdiction by the California courts permissible
18 under traditional notions of fair play and substantial justice.

19 10. Venue is proper in the County of Los Angeles because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
21 because Defendants conducted, and continue to conduct, business in the County of Los
22 Angeles with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

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

6 12. Proposition 65 requires the Governor of California to publish a list of chemicals known
7 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
8 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
9 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
10 other controls that apply to Proposition 65-listed chemicals.

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

17 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
19 25249.7. "Threaten to violate" means "to create a condition in which there is a
20 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 15. Plaintiff identified certain practices of manufacturers and distributors of exposing,
24 knowingly and intentionally, persons in California to Diethyl Hexyl Phthalate and Bis
25 (2-ethylhexyl) phthalate without first providing clear and reasonable warnings of such to
26 the exposed persons prior to the time of exposure. Plaintiff later discerned that
27 Defendants engaged in such practice.

1 16. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate and Bis
2 (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause
3 cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October 24, 2003, the Governor
4 added DEHP to the list of chemicals known to the State to cause developmental male
5 reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and
6 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP
7 to the list of chemicals known to the State to cause reproductive toxicity, DEHP became
8 fully subject to Proposition 65 warning requirements and discharge prohibitions.

9 **SATISFACTION OF PRIOR NOTICE**

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

- 12 a. On or about December 3, 2020, Plaintiff gave notice of alleged violations of
13 Health and Safety Code Section 25249.6, concerning consumer products
14 exposures subject to a private action to TARGET and to the California Attorney
15 General, County District Attorneys, and City Attorneys for each city containing
16 a population of at least 750,000 people in whose jurisdictions the violations
17 allegedly occurred, concerning Animal Print Plastic Purse.

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

21 19. Plaintiff’s notice of alleged violation included a Certificate of Merit executed by the
22 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
23 Plaintiff who executed the certificate had consulted with at least one person with relevant
24 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
25 subject Proposition 65-listed chemical of this action. Based on that information, the
26 attorney for Plaintiff who executed the Certificate of Merit believed there was a
27 reasonable and meritorious case for this private action. The attorney for Plaintiff
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1 attached to the Certificate of Merit served on the Attorney General the confidential
2 factual information sufficient to establish the basis of the Certificate of Merit.

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

6 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
7 gave notice of the alleged violations to TARGET, and the public prosecutors referenced
8 in Paragraph 17.

9 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
10 any applicable district attorney or city attorney has commenced and is diligently
11 prosecuting an action against the Defendants.

12 **FIRST CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against TARGET and DOES**
14 **1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
15 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

16 **Fashion Accessories**

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

19 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
20 distributor, promoter, or retailer of Animal Print Plastic Purse ("Purse"), including but
21 not limited to: Animal print plastic metallic purse/shoulder bag; "More than magic TM";
22 "202 14 0042 Multi/Tak1676"; "Origin: China"; "UPC 4 92021 40042 4"; F16936513-
23 Q4/19".

24 25. Purse contains DEHP.

25 26. Defendants knew or should have known that DEHP has been identified by the State of
26 California as a chemical known to cause cancer, and reproductive toxicity and therefore
27 was subject to Proposition 65 warning requirements. Defendants were also informed of
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1 the presence of DEHP in Purse within Plaintiff's notice of alleged violations further
2 discussed above at Paragraph 17.

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

9 28. Plaintiff is informed, believes, and thereon alleges that between December 3, 2017 and
10 the present, each of the Defendants knowingly and intentionally exposed California
11 consumers and users of Purse, which Defendants manufactured, distributed, or sold as
12 mentioned above, to DEHP, without first providing any type of clear and reasonable
13 warning of such to the exposed persons before the time of exposure. Defendants have
14 distributed and sold Purse in California. Defendants know and intend that California
15 consumers will use Purse, thereby exposing them to relevant chemical. Defendants
16 thereby violated Proposition 65.

17 29. Plaintiff is informed, believes, and thereon alleges that TARGET is selling Purse under a
18 brand or trademark that is owned or licensed by TARGET or an entity affiliated thereto;
19 has knowingly introduced DEHP into Purse or knowingly caused DEHP to be created in
20 Purse; have covered, obscured or altered a warning label that has been affixed to Purse
21 by the manufacturer, producer, packager, importer, supplier or distributor of Purse; have
22 received a notice and warning materials for exposure from DEHP without conspicuously
23 posting or displaying the warning materials; and/or have actual knowledge of potential
24 exposure to DEHP from Purse.

25 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.
26 Persons sustain exposures by handling Purse without wearing gloves or any other
27 personal protective equipment, or by touching bare skin or mucous membranes with
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1 gloves after handling Purse, as well as through direct and indirect hand to mouth contact,
2 hand to mucous membrane, or breathing in particulate matter emanating from Purse
3 during use, as well as through environmental mediums that carry the DEHP once
4 contained within the Purse.

5 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to Purse have been ongoing and continuous, as Defendants engaged
7 and continue to engage in conduct which violates Health and Safety Code Section
8 25249.6, including the manufacture, distribution, promotion, and sale of Purse, so that a
9 separate and distinct violation of Proposition 65 occurred each and every time a person
10 was exposed to DEHP by Purse as mentioned herein.

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

14 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to DEHP from Purse, pursuant to Health and
16 Safety Code Section 25249.7(b).

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

19 **PRAYER FOR RELIEF**

20 Plaintiff demands against each of the Defendants as follows:

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

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1 Dated: February 11, 2021

YEROUSHALMI & YEROUSHALMI*

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5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 CONSUMER ADVOCACY GROUP, INC.
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