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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

10/18/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-22-602445**

12 EMA BELL,

13 Plaintiff,

14 vs.

15 TARGET CORPORATION,

16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in Mondo
Llama media case, UPC# 737838798228 sold and/or distributed by defendant Target Corporation
 (“Target” or “Defendant”) in California.

1 3. DINP is a harmful chemical known to the State of California to cause cancer. On
2 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause
3 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
4 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

16 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
17 without a requisite exposure warning, Mondo Llama media case, UPC# 737838798228 (the
18 “Products”) that expose persons to DINP when used for their intended purpose.

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

23 8. Plaintiff seeks civil penalties against Defendant for their violations of Proposition
24 65 in accordance with Health and Safety Code § 25249.7(b).

25 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
26 Defendant to provide purchasers or users of the Products with required warnings related to the
27 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code
28 § 25249.7(a).

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

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

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

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

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

18 a. A warning that appears on a product’s label or other labeling.

19 b. Identification of the product at the retail outlet in a manner which provides
20 a warning. Identification may be through shelf labeling, signs, menus, or a combination
21 thereof.

22 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
23 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
24 with such conspicuousness, as compared with other words, statements, designs, or devices

25
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 in the label, labeling or display as to render it likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use.

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

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

11 **FACTUAL BACKGROUND**

12 21. On December 20, 2013, the State of California listed DINP as a chemical known to
13 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
14 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

15 22. The exposures that are the subject of the Notice result from the purchase,
16 acquisition, handling and recommended use of the Product. The primary route of exposure to the
17 is through dermal absorption directly through the skin when consumers use, touch, or handle the
18 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
19 of the user’s hand to mouth. No clear and reasonable warning is provided with the Products
20 regarding the health hazards of exposure.

21 23. Defendant has manufactured, processed, marketed, distributed, offered to sell
22 and/or sold the Products in California since at least November 17, 2021. The Products continue to
23 be distributed and sold in California without the requisite warning information.

24 24. At all times relevant to this action, Defendant has knowingly and intentionally
25 exposed users of the Products to DINP without first giving a clear and reasonable exposure
26 warning to such individuals.

27 25. As a proximate result of acts by defendant, as a person in the course of doing
28 business within the meaning of H&S Code § 25249.11, individuals throughout the State of

1 California, including in San Francisco County, have been exposed to DINP without a clear and
2 reasonable warning on the Products. The individuals subject to the violative exposures include
3 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
4 the Products.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 26. On October 1, 2021, Plaintiff purchased the Product from Target. At the time of
7 purchase, Target did not provide a Proposition 65 exposure warning for DINP or any other
8 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
9 *supra*.

10 27. On or about October 8, 2021, the Product was sent to a testing laboratory for
11 phthalate testing to determine the phthalate content of the Product.

12 28. On November 1, 2021, the laboratory provided the results of its analysis. Results
13 of this test determined the Product exposes users to DINP (the “Chemical Test Report”).

14 29. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
15 to determine if, based on the findings of the Chemical Test Report and the reasonable and
16 foreseeable use of the Product, exposure to DINP will occur at levels that require Proposition 65
17 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
18 Code of Regulations.

19 30. On November 17, 2021, Plaintiff received from the analytical chemist an exposure
20 assessment report which concluded that persons in California who use the Products will be exposed
21 to levels of DINP that require a Proposition 65 exposure warning.

22 31. On November 17, 2021, Plaintiff gave notice of alleged violation of Health and
23 Safety Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens
24 to DINP from use of the Products without proper warning, subject to a private action to Defendants
25 and to the California Attorney General’s office and the offices of the County District attorneys and
26 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
27 violations allegedly occurred.

1 32. The Notice complied with all procedural requirements of Proposition 65 including
2 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
3 least one person with relevant and appropriate expertise who reviewed relevant data regarding
4 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private
5 action.

6 33. After receiving the Notice, and to Plaintiff's best information and belief, none of
7 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
8 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
9 the subject of the Notice.

10 34. Plaintiff is commencing this action more than sixty (60) days from the date of the
11 Notice to Defendants, as required by law.

12 **FIRST CAUSE OF ACTION**

13 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

14 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of
15 this Complaint as though fully set forth herein.

16 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
17 the Products.

18 37. Use of the Products will expose users and consumers thereof to DINP, a hazardous
19 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

20 38. The Products do not comply with the Proposition 65 warning requirements.

21 39. Plaintiff, based on her best information and belief, avers that at all relevant times
22 herein, and at least since November 17, 2021, continuing until the present, that Defendant has
23 continued to knowingly and intentionally expose California users and consumers of the Products
24 to DINP without providing required warnings under Proposition 65.

25 40. The exposures that are the subject of the Notice result from the purchase,
26 acquisition, handling and recommended use of the Product. The primary route of exposure to the
27 is through dermal absorption directly through the skin when consumers use, touch, or handle the
28 Products. Exposure through ingestion will occur by touching the Product with subsequent touching

1 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
2 regarding the health hazards of exposure.

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

6 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
7 Products exposes individuals to DINP, and Defendants intend that exposures to DINP will occur
8 by their deliberate, non-accidental participation in the importation, distribution, sale and offering
9 of the Products to consumers in California

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

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

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

1 **PRAYER FOR RELIEF**

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

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

7 B. That the court preliminarily and permanently enjoin Defendant 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 18, 2022

BRODSKY & SMITH

13 By:  _____

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