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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

09/14/2023
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

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

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 TARGET CORPORATION,

15 Defendant.

Case No.: CGC-23-608083

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

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

16 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following
17 cause 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 first amended complaint is a representative action brought by Plaintiff in the
26 public interest of the citizens of the State of California to enforce the People’s right to be informed
27 of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical
28 found in products sold and/or distributed by defendant Target Corporation (“Target” or
“Defendant”) in California.

1 3. DEHP¹ is a harmful chemical known to the State of California to cause cancer and
2 birth defects or other reproductive harm.

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

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

15 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
16 without a requisite exposure warning, *Lily Frilly*® mermaid sparkle clips for toddlers, UPC #
17 850007602222, (the “Products”) that expose persons to DEHP when used for their intended
18 purpose.

19 7. Defendant’s failure to warn consumers and other individuals in California of the
20 health hazards associated with exposure to DEHP 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
24
25
26 _____
27 ¹ On January 1, 1988, the State of California listed DEHP as a chemical known to the State to
28 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.
Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24,
2003, the State of California listed DEHP as a chemical known to cause birth defects or other
reproductive harm.

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

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
4 Defendant to provide purchasers or users of the Products with required warnings related to the
5 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code
6 § 25249.7(a).

7 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

8 **PARTIES**

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

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

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

18 **VENUE AND JURISDICTION**

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

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

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

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

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

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

12 21. Proposition 65 provides that any “person who violates or threatens to violate” the
13 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
14 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
15 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
16 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
17 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

18 **FACTUAL BACKGROUND**

19 22. On January 1, 1988, the State of California listed DEHP as a chemical known to
20 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
21 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
22 On October 24, 2003, the State of California listed DEHP as a chemical known to cause birth
23 defects or other reproductive harm.

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

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

3 24. Defendant has processed, marketed, distributed, offered to sell and/or sold the
4 Products in California since at least August 3, 2022. The Products continue to be distributed and
5 sold in California without the requisite warning information.

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

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

15 **SATISFACTION OF NOTICE REQUIREMENTS**

16 27. Plaintiff purchased the Products from Target. At the time of purchase, Target did
17 not provide a Proposition 65 exposure warning for DEHP or any other Proposition 65 listed
18 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

19 28. The Products were sent to a testing laboratory for phthalate testing to determine the
20 phthalate content of the product.

21 29. Plaintiff received a chemical test report (the "Chemical Test Reports"). The
22 Chemical Test report findings determined the Products expose users to DEHP.

23 30. Plaintiff provided the Chemical Test Report and the Products to an analytical
24 chemist to determine if, based on the findings of the Chemical Test Report and the reasonable and
25 foreseeable use of the Products, exposure to DEHP will occur at levels that require Proposition 65
26 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
27 Code of Regulations.

28

1 31. On August 3, 2022, Plaintiff received from the analytical chemist an exposure
2 assessment report for the Products that concluded that persons in California who use the Products
3 will be exposed to levels of DEHP that require a Proposition 65 exposure warning.

4 32. On August 3, 2022, Plaintiff gave notice of alleged violation of Health and Safety
5 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
6 DEHP contained in the Products without proper warning, subject to a private action to Defendant
7 and to the California Attorney General's office and the offices of the County District attorneys and
8 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
9 violations allegedly occurred. See attached at Exhibit "A" a true and correct copy of the Notice.

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

15 34. After receiving the Notice, and to Plaintiff's best information and belief, none of
16 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
17 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
18 the subject of the Notice.

19 35. Plaintiff is commencing this action more than sixty (60) days from the date of the
20 Notice to Defendant, as required by law.

21 **FIRST CAUSE OF ACTION**

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

23 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
24 this First Amended Complaint as though fully set forth herein.

25 37. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
26 the Products.

27 38. Use of the Products will expose users to DEHP, a hazardous chemical found on the
28 Proposition 65 list of chemicals known to be hazardous to human health.

1 39. The Products do not comply with the Proposition 65 warning requirements.

2 40. Plaintiff, based on her best information and belief, avers that at all relevant times
3 herein, and at least since August 3, 2022, continuing until the present, that Defendant has continued
4 to knowingly and intentionally expose California users and consumers of the Products to DEHP
5 without providing required warnings under Proposition 65.

6 41. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the Products. The primary route of exposure to the
8 is through dermal absorption directly through the skin when consumers use, touch, or handle the
9 Products. Exposure through ingestion will occur by touching the Products with subsequent
10 touching of the user's hand to mouth. No clear and reasonable warning is provided with the
11 Products regarding the health hazards of exposure.

12 42. Plaintiff, based on her best information and belief, avers that such exposures will
13 continue every day until clear and reasonable warnings are provided to purchasers and users or
14 until these known toxic chemicals are removed from the Products.

15 43. Defendant has knowledge that the normal and reasonably foreseeable use of the
16 Products expose individuals to DEHP, and Defendant intends that exposures to DEHP will occur
17 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
18 the Products to consumers in California

19 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
20 First Amended Complaint.

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

23 46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
24 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 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 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: September 14, 2023

BRODSKY SMITH

13 By:  _____

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15 Ryan P. Cardona (SBN302113)
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17 Beverly Hills, CA 90212
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Attorneys for Plaintiff

EXHIBIT “A”

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August 3, 2022

Member/Manager Lily Frilly, LLC c/o Courtney Adeleye 131 Mist River Lane Huntsville, AL 35824	Member/Manager Olbali, LLC c/o Lily Frilly, LLC 6526 Old Brick Road, Suite 120-327 Windermere, FL 34786
President/CEO Target Corporation c/o CT Corporation System 1010 Dale St. N St. Paul, MN 55117-5603	President/CEO Target Brands, Inc. c/o CT Corporation System 1010 Dale St. N St. Paul, MN 55117-5603

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

1. **Enforcer:** Precila Balabbo, 285 W. 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Lily Frilly, LLC; Olbali, LLC; Target Corporation; Target Brands, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least August 3, 2022 and are continuing to this day.
4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Clip	Lily Frilly Mermaid Sparkle Clip for toddlers UPC# 850007602222

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Balabbo has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary