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9 CONSUMER ADVOCACY GROUP, INC.

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County of Alameda
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

13 CONSUMER ADVOCACY GROUP, INC.,
14 in the public interest,

15 Plaintiff,

16 v.

17 WALMART, INC., a Delaware Corporation;
18 WALMART.COM USA, LLC, a California
19 Limited Liability Company;
20 AHQ, LLC, a New York Limited Liability
21 Company;
22 and DOES 1-10,
23 Defendants.

CASE NO. **23CV025114**

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)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
25 defendants WALMART, INC.; WALMART.COM USA, LLC; AHQ, LLC, and DOES 1-10 as
26 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 WALMART, INC. (“WALMART INC.”) is a Delaware Corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
3. Defendant WALMART.COM USA, LLC (“WALMART.COM LLC”) is a California Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Defendant AHQ, LLC (“AHQ”) is a New York Limited Liability Company, qualified to do business in New York, and doing business in the State of California at all relevant times herein.
5. 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.
6. At all times mentioned herein, the term “Defendants” includes WALMART INC., WALMART.COM LLC, AHQ, and DOES 1-10.
7. 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.
8. 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

1 Defendants. In conducting the activities alleged in this Complaint, each of the
2 Defendants was acting within the course and scope of this agency, service, or
3 employment, and was acting with the consent, permission, and authorization of each of
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint
5 were ratified and approved by every other Defendant or their officers or managing
6 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
7 alleged wrongful conduct of each of the other Defendants.

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

12 **JURISDICTION**

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

3 **BACKGROUND AND PRELIMINARY FACTS**

4 13. In 1986, California voters approved an initiative to address growing concerns about
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
10 from contamination, to allow consumers to make informed choices about the products
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see
12 fit.

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known
14 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
15 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
16 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
17 other controls that apply to Proposition 65-listed chemicals.

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

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
26 25249.7. "Threaten to violate" means "to create a condition in which there is a
27 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 17. Plaintiff identified certain practices of manufacturers and distributors of Handbags of
4 exposing, knowingly and intentionally, persons in California to Diethyl Hexyl Phthalate
5 and Bis (2-ethylhexyl) phthalate, and Diisononyl Phthalate of such products without first
6 providing clear and reasonable warnings of such to the exposed persons prior to the time
7 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

8 18. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate and Bis
9 (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause
10 cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October 24, 2003, the Governor
11 added DEHP to the list of chemicals known to the State to cause developmental male
12 reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and
13 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP
14 to the list of chemicals known to the State to cause reproductive toxicity, DEHP became
15 fully subject to Proposition 65 warning requirements and discharge prohibitions.

16 19. On December 20, 2013, the Governor of California added Diisononyl Phthalate
17 (“DINP”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
18 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
19 twenty (20) months after addition of DINP to the list of chemicals known to the State to
20 cause cancer, DINP became fully subject to Proposition 65 warning requirements and
21 discharge prohibitions.

22 **SATISFACTION OF PRIOR NOTICE**

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

- 25 a. On or about September 1, 2022, Plaintiff gave notice of alleged violations of
26 Health and Safety Code Section 25249.6, concerning consumer products
27 exposures subject to a private action to WALMART INC., WALMART.COM

1 LLC, AHQ, and to the California Attorney General, County District Attorneys,
2 and City Attorneys for each city containing a population of at least 750,000
3 people in whose jurisdictions the violations allegedly occurred, concerning the
4 Handbags.

5 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
6 products involved, the likelihood that such products would cause users to suffer
7 significant exposures to DEHP, DINP, and the corporate structure of each of the
8 Defendants.

9 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
10 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
11 Plaintiff who executed the certificate had consulted with at least one person with relevant
12 and appropriate expertise who reviewed data regarding the exposures to DEHP, DINP,
13 the subject Proposition 65-listed chemical of this action. Based on that information, the
14 attorney for Plaintiff who executed the Certificate of Merit believed there was a
15 reasonable and meritorious case for this private action. The attorney for Plaintiff
16 attached to the Certificate of Merit served on the Attorney General the confidential
17 factual information sufficient to establish the basis of the Certificate of Merit.

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

21 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notice of the alleged violations to WALMART INC., WALMART.COM LLC,
23 AHQ, and the public prosecutors referenced in Paragraph 20.

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

1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against WALMART INC.,**
3 **WALMART.COM LLC, AHQ, and DOES 1-10 for Violations of Proposition 65,**
4 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety***
5 ***Code, §§ 25249.5, et seq.))***

6 **Fashion Accessories**

7 26. Plaintiff repeats and incorporates by reference paragraphs 1 through 25 of this complaint
8 as though fully set forth herein.

9 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Handbags (“Handbags”), including but not limited to
11 “Giselle Paris”; “Black Adele Satchel”; “Style # GPS21802”; “AHQ, LLC”;
12 “RN#137646”; “UPC 8 84239 03042 3” and “Giselle Paris”; “Black Eloise Satchel”;
13 “Style # GPS21800”; “AHQ, LLC”; “RN#137646”; “UPC 8 84239 03032 4.”

14 28. Handbags contains DEHP and DINP.

15 29. Defendants knew or should have known that DEHP and DINP has been identified by the
16 State of California as a chemical known to cause cancer, and reproductive toxicity and
17 therefore was subject to Proposition 65 warning requirements. Defendants were also
18 informed of the presence of DEHP and DINP in Handbags within Plaintiff's notice of
19 alleged violations further discussed above at Paragraph 20a.

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

26 31. Plaintiff is informed, believes, and thereon alleges that between September 1, 2019 and
27 the present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Handbags, which Defendants manufactured, distributed, or sold
as mentioned above, to DEHP and DINP, 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 Handbags in California. Defendants know and
3 intend that California consumers will use and consume Handbags, thereby exposing
4 them to DEHP and DINP. Further, Plaintiff is
5 informed, believes, and thereon alleges that Defendants are selling Handbags under a
6 brand or trademark that is owned or licensed by the Defendants or an entity affiliated
7 thereto; have knowingly introduced DEHP and DINP into product or knowingly caused
8 DEHP and DINP to be created in Handbags; have covered, obscured or altered a warning
9 label that has been affixed to Handbags by the manufacturer, producer, packager,
10 importer, supplier or distributor of Handbags; have received a notice and warning
11 materials for exposure from Handbags without conspicuously posting or displaying the
12 warning materials; and/or have actual knowledge of potential exposure to DEHP and
13 DINP from Handbags. Defendants thereby violated Proposition 65.

14 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by handling Handbags without wearing gloves or any other
16 personal protective equipment, or by touching bare skin or mucous membranes with
17 gloves after handling Handbags, as well as through direct and indirect hand to mouth
18 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
19 Handbags.

20 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
21 Proposition 65 as to Handbags have been ongoing and continuous, as Defendants
22 engaged and continue to engage in conduct which violates Health and Safety Code
23 Section 25249.6, including the manufacture, distribution, promotion, and sale of
24 Handbags, so that a separate and distinct violation of Proposition 65 occurred each and
25 every time a person was exposed to DEHP and DINP by Handbags as mentioned herein.
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1 34. 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 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP and DINP from Handbags, pursuant
6 to Health and Safety Code Section 25249.7(b).

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

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10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

12 37. A permanent injunction mandating Proposition 65-compliant warnings;

13 38. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);

14 39. Costs of suit;

15 40. Reasonable attorney fees and costs; and

16 41. Any further relief that the court may deem just and equitable.

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18 Dated: January 4, 2023

YEROUSHALMI & YEROUSHALMI*

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20
21 /s/Reuben Yeroushalmi

Reuben Yeroushalmi

Attorneys for Plaintiff,

Consumer Advocacy Group, Inc.