

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Keosian

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Attorneys for Plaintiff,  
Consumer Protection Group, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

CONSUMER PROTECTION GROUP,  
LLC, in the public interest,

Plaintiff,

v.

DIGGS INC., WALMART INC.,  
and DOES 1-30

Defendants.

CASE NO. 23STCV06259

**PLAINTIFF CONSUMER  
PROTECTION GROUP, LLC’S  
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.*)

UNLIMITED CIVIL  
(Demand exceeds \$25,000)

Plaintiff CONSUMER PROTECTION GROUP, LLC alleges a cause of action against  
Defendants DIGGS, INC., WALMART INC., and DOES 1-30 (“DEFENDANTS”).

**THE PARTIES**

1. Plaintiff, CONSUMER PROTECTION GROUP LLC (“Plaintiff” or “CPG”), is  
an organization qualified to do business in the State of California. CPG is a person within the  
meaning of Health and Safety Code section 25249.11, subdivision (a). CPG, acting as a private

1 attorney general, brings this action in the public interest as defined under Health and Safety  
2 Code section 25249.7, subdivision (d).

3 2. Defendant, DIGGS INC., (“Defendant” or “Diggs”) is a New York Corporation,  
4 doing business in the State of California at all relative times herein.

5 3. Defendant, WALMART INC. (“Defendant” or “Walmart”) is a California  
6 Corporation, doing business in the State of California at all relative times herein.

7 4. Plaintiff is unaware of the true names or capacities of the Defendants sued herein  
8 under the fictitious names DOES 1 through 30 but will seek leave of this Court to amend the  
9 complaint and serve such fictitiously named Defendants once their names and capacities become  
10 known.

11 5. Plaintiff is informed and believes, and thereon alleges that Defendant at all times  
12 mentioned herein has conducted business within the State of California.

13 6. Upon information and belief, at all times relevant to this action, Defendant was  
14 an agent, servant, or employee of the Defendant. In conducting the activities alleged in this  
15 Complaint, Defendant was acting within the course and scope of this agency, service, or  
16 employment, and was acting with the consent, permission, and authorization of the Defendant.

17 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times the  
18 Defendant was a person doing business within the meaning of Health and Safety Code section  
19 25249.11, subdivision (b), and that the Defendant had ten (10) or more employees at all relevant  
20 times.

21 **JURISDICTION**

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



1 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
2 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable”  
3 warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed  
4 chemical (*Health & Safety Code* § 25249.6).

5 14. Proposition 65 provides that any person "violating or threatening to violate" the  
6 statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
7 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial  
8 probability that a violation will occur." *Health & Safety Code* § 25249.11(e). Defendant is also  
9 liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action.  
10 *Health & Safety Code* § 25249.7(b).

11 15. On February 27, 1987, the Governor of California added Lead to the list of  
12 chemicals known to the state to cause developmental toxicity, male reproductive toxicity, and  
13 female reproductive toxicity.

14 16. On January 1, 1988, the Governor of California added Di (2-ethylhexyl)  
15 phthalate (“DEHP”) to the list of chemicals known to the state to cause Cancer. On October  
16 24, 2023, the Governor of California further added DEHP to the list of chemicals known to the  
17 state to cause developmental toxicity and male reproductive toxicity.

18 17. Plaintiff identified certain practices of manufacturers and distributors of  
19 products bearing Lead and DEHP, exposing, knowingly, and intentionally, persons in  
20 California to said Proposition 65-listed chemical without first providing clear and reasonable  
21 warnings to the exposed persons prior to the time of exposure. Plaintiff later learned that  
22 Defendant has engaged in such practice.

23 **SATISFACTION OF PRIOR NOTICE**

24 18. On or about September 23, 2022, Plaintiff gave notice of alleged violations of  
25 Health and Safety Code section 25249.6, concerning consumer product exposures, subject to a  
26 private action to Diggs and Walmart, and to the California Attorney General, County District  
27 Attorneys, and City Attorneys for each County containing a population of at least 750,000

1 people in whose jurisdiction the violations allegedly occurred, concerning Passenger Travel  
2 Carrier containing extreme amounts of Lead and DEHP.

3 19. Before sending the notice of alleged violations, Plaintiff investigated the  
4 consumer products involved, the likelihood that such products would cause users to suffer  
5 significant exposures to Lead, DEHP, and the corporate structure of the Defendant.

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

15 21. Plaintiff's notice of alleged violation also included a Certificate of Service and a  
16 document titled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65)  
17 A Summary." *Health & Safety Code* § 25249.7(d).

18 22. Plaintiff is commencing this action more than sixty (60) days from the dates that  
19 Plaintiff gave notices of the alleged violation to the Defendants and the public prosecutors  
20 referenced in Paragraphs 18.

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

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER PROTECTION GROUP, LLC against Diggs Inc., Walmart Inc., and  
3 DOES 1-30 for Violations of Proposition 65,  
4 The Safe Drinking Water and Toxic Enforcement Act of 1986  
5 (*Health & Safety Code*, §§ 25249.5, *et seq.*)

6 **PASSANGER TRAVEL CARRIER**

7 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this  
8 complaint as though fully set forth herein. The Defendants are and at all times mentioned herein  
9 was a manufacturer and/or supplier of the passenger travel carrier (“Carrier”).

10 25. Plaintiff is informed, believes, and thereon alleges that the Carrier contains  
11 DEHP.

12 26. Defendant knew or should have known that DEHP has been identified by the  
13 State of California as a chemical known to cause Cancer, developmental toxicity, and male  
14 reproductive toxicity and therefore was subject to Proposition 65 warning requirements.  
15 Defendant was also informed of the presence of DEHP in the Carrier within Plaintiff's notice  
16 of alleged violations further discussed above at Paragraph 18.

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

23 28. Plaintiff is informed, believes, and thereon alleges that between September 23,  
24 2019, and the present, Defendant knowingly and intentionally exposed California consumers  
25 and users of the Carrier, which Defendant manufactured, distributed, or sold as mentioned  
26 above, to DEHP, without first providing any type of clear and reasonable warning of such to  
27 the exposed persons before the time of exposure. Defendant has distributed and sold the Carrier  
28

1 in California. Defendant knows and intend that California consumers will use and handle the  
2 Carrier, thereby exposing them to DEHP. Defendant thereby violated Proposition 65.

3 29. The principal routes of exposure with regard to the Carrier are and were through  
4 dermal contact and ingestion. Persons sustain exposures by handling or otherwise using the  
5 Carrier with bare skin, without wearing gloves, or by touching bare skin or mucous membranes  
6 with the Carrier after consuming the Carrier as well as through direct and indirect hand to mouth  
7 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane.

8 30. Plaintiff is informed, believes, and thereon alleges that each of Defendant's  
9 violations of Proposition 65 as to the Carrier have been ongoing and continuous to the date of  
10 the signing of this complaint, as Defendant engaged and continue to engage in conduct which  
11 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
12 promotion, and sale of the Carrier, so that a separate and distinct violation of Proposition 65  
13 occurred each and every time a person was exposed to DEHP by the Carrier as mentioned  
14 herein.

15 31. Plaintiff is informed, believes, and thereon alleges that each violation of  
16 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that  
17 the violations alleged herein will continue to occur into the future.

18 32. Based on the allegations herein, Defendant is liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DEHP from the Carrier pursuant to Health and  
20 Safety Code section 25249.7(b).

21 33. In the absence of equitable relief, the general public will continue to be  
22 involuntarily exposed to DEHP that is contained in the Carrier, creating a substantial risk of  
23 irreparable harm. Thus, by committing the acts alleged herein, Defendant has caused irreparable  
24 harm for which there is no plain, speedy, or adequate remedy at law.

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

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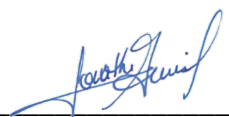
1 **PRAYER FOR RELIEF**

2 Plaintiff demands against the Defendant as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings for any  
4 future sales of the Carrier;
- 5 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 6 3. Costs of suit;
- 7 4. Reasonable attorney fees and costs; and
- 8 5. Any further relief that the court may deem just and equitable.

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11 Dated: March 20, 2023

**BLACKSTONE LAW, APC**

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14 By:  \_\_\_\_\_  
15 Jonathan M. Genish  
16 Attorneys for Plaintiff,  
17 Consumer Protection Group, LLC  
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