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9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 B TWEEN LLC, a New York Limited
17 Liability Company;

18 NORDSTROM, INC., a Washington
19 Corporation;

20 NIHC, INC., a Colorado Corporation;
21 and DOES 1-10,

22 Defendants.

ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

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By: Milagros Cortez,

Deputy Clerk

CASE NO. **25CV120458**

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 \$35,000)

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26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
27 defendants B TWEEN LLC; NORDSTROM, INC.; NIHC, INC., 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 B TWEEN LLC (“BTWEEN”) is a New York Limited Liability Company, qualified to do business in California, and doing business in the State of California at all relevant times herein.
3. Defendant NORDSTROM, INC (“NORDSTROM”) is a Washington Corporation, qualified to do business in California, and doing business in the State of California at all relevant times herein.
4. Defendant NIHC, INC (“NIHC”) is a Colorado Corporation, qualified to do business in Colorado, 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 BTWEEN, NORDSTROM, NIHC, 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 Defendants. In conducting the activities alleged in this Complaint, each of the

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

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

11 **JURISDICTION**

- 12 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
13 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
14 those given by statute to other trial courts. This Court has jurisdiction over this action
15 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
16 violations of Proposition 65 in any Court of competent jurisdiction.
- 17 11. This Court has jurisdiction over Defendants named herein because Defendants either
18 reside or are located in this State or are foreign corporations authorized to do business in
19 California, are registered with the California Secretary of State, or who do sufficient
20 business in California, have sufficient minimum contacts with California, or otherwise
21 intentionally avail themselves of the markets within California through their
22 manufacture, distribution, promotion, marketing, or sale of their products within
23 California to render the exercise of jurisdiction by the California courts permissible
24 under traditional notions of fair play and substantial justice.
- 25 12. Venue is proper in the County of Alameda because one or more of the instances of
26 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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Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

17. Plaintiff identified certain practices of manufacturers and distributors of Swimsuits with Tote Bags of exposing, knowingly and intentionally, persons in California to Diethyl Hexyl Phthalate and Di (2-ethylhexyl) phthalate of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.
18. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate and Di (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to the State to cause reproductive toxicity, DEHP became fully subject to Proposition 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

19. Plaintiff served the following notices for alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures:
- a. On or about August 27, 2024, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products exposures subject to a private action to BTWEEN, NORDSTROM, NIHC, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the Swimsuits with Tote Bags.
 - b. On or about September 3, 2024, Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6, concerning consumer products

1 exposures subject to a private action to BTWEEN, NORDSTROM, NIHC, and
2 to the California Attorney General, County District Attorneys, and City
3 Attorneys for each city containing a population of at least 750,000 people in
4 whose jurisdictions the violations allegedly occurred, concerning the Swimsuits
5 with Tote Bags.

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

9 21. 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, the
13 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 22. 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 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notice of the alleged violations to BTWEEN, NORDSTROM, NIHC, and the
23 public prosecutors referenced in Paragraph 19.

24 24. 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 BTWEEN, NORSTROM,**
3 **NIHC, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and**
4 **Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

5 **Fashion Accessories**

6 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint
7 as though fully set forth herein.

8 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Swimsuits with Tote Bags (“Swimsuits”), including
10 but not limited to:

11 i. “bmagical by btween”; "SWIMSUIT WITH TOTE BAG"; "50+ UPF ULTRA
12 VIOLET PROTECTION"; "8 SIZE"; "7H722NR"; "MULTI"; "UPC
13 187181063532"; *and*

14 ii. “bmagical by btween”; "SWIMSUIT WITH TOTE BAG"; "50+ UPF ULTRA
15 VIOLET PROTECTION"; "3T SIZE"; "2H698NR"; "MULTI";
16 "197181062146"; "Shine like a Starfish".

17 27. Swimsuits contains DEHP.

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

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

1 30. Plaintiff is informed, believes, and thereon alleges that between August 27, 2021, and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Swimsuits, which Defendants manufactured, distributed, or sold
4 as mentioned above, to DEHP, without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold Swimsuits in California. Defendants know and intend that
7 California consumers will use and consume Swimsuits, thereby exposing them to DEHP.
8 Further, Plaintiff is informed, believes, and thereon alleges that Defendants are selling
9 Swimsuits under a brand or trademark that is owned or licensed by the Defendants or an
10 entity affiliated thereto; have knowingly introduced DEHP into Swimsuits or knowingly
11 caused DEHP to be created in Swimsuits; have covered, obscured or altered a warning
12 label that has been affixed to Swimsuits by the manufacturer, producer, packager,
13 importer, supplier or distributor of Swimsuits; have received a notice and warning
14 materials for exposure from Swimsuits without conspicuously posting or displaying the
15 warning materials; and/or have actual knowledge of potential exposure to DEHP from
16 Swimsuits. Defendants thereby violated Proposition 65.

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

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

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

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

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

PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: April 25, 2025

YEROUSHALMI & YEROUSHALMI*

/s/ Reuben Yeroushalmi

Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.