

FILED

FEB - 9 2015

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

1 EDWARD S. BERBERIAN
2 District Attorney, County of Marin
3 Andres H. Perez, SBN 186219
4 Deputy District Attorney
3501 Civic Center Dr., Room 130
San Rafael, CA 94903

5 (For list of additional Plaintiff's counsel,
6 see attached Exhibit 1)

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF MARIN

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 v.

14 TARGET CORPORATION, a Minnesota
corporation,

15 Defendant.

Case No. CIV 15 00 47 4

COMPLAINT FOR INJUNCTION,
RESTITUTION, CIVIL PENALTIES,
AND OTHER EQUITABLE RELIEF

17 Plaintiff, the People of the State of California, appearing through its attorneys, Edward S.
18 Berberian, Marin County District Attorney, by Andres H. Perez, Deputy District Attorney; Mark
19 A. Peterson, Contra Costa County District Attorney, by Gary E. Koeppel, Supervising Deputy
20 District Attorney; Lisa A. Smittcamp, Fresno County District Attorney, by Edward T. Browne,
21 Deputy District Attorney; Jeffrey Rosell, Santa Cruz County District Attorney, by William R.
22 Atkinson, Assistant District Attorney; Jill R. Ravitch, Sonoma County District Attorney, by
23 Matthew T. Cheever, Deputy District Attorney; and Jan I. Goldsmith, San Diego City Attorney,
24 by Kathryn L. Turner, Assistant City Attorney and Kristine A. Lorenz, Deputy City Attorney;
25 (hereinafter "Plaintiff") allege on information and belief the following:

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1 JURISDICTION AND VENUE

2 1. Defendant, Target Corporation, is and at all times mentioned herein, has been
3 engaged in the retail business of selling food and general merchandise and has transacted business
4 in the Counties of Contra Costa, Fresno, Marin, Santa Cruz, Sonoma; the City of San Diego; and
5 elsewhere throughout the State of California. The violations of law alleged herein have been
6 carried out within the Counties of Contra Costa, Fresno, Marin, Santa Cruz, Sonoma; the City of
7 San Diego; and elsewhere throughout the State of California.

8 2. Target Corporation owns and operates approximately 258 retail stores throughout
9 the State of California under the names Target, CityTarget, and SuperTarget.

10 3. Target Corporation is and was at all times mentioned in the Complaint, a
11 Minnesota Corporation, with its principal place of business at 1000 Nicollet Mall, Minneapolis,
12 Minnesota 55403.

13 4. Whenever a reference is made in this Complaint to any representation, act or
14 transaction of Target Corporation, such allegation shall be deemed to mean that Target
15 Corporation and its principals, officers, directors, employees, agents, and/or representatives
16 (hereinafter collectively "Defendant"), while actively engaged within the actual or ostensible
17 scope of their employment, did or authorized such representation, acts or transactions on behalf of
18 Target Corporation.

19 5. The authority of the Plaintiff to bring this action on behalf of the People of the
20 State of California is derived from the statutory law of the state of California, *inter alia* Business
21 and Professions Code sections 17200, 17204, 17206, 17207, 17500, 17535, 17535.5, and 17536.

22 GENERAL ALLEGATIONS

23 6. Beginning at an exact date unknown to Plaintiff, but commencing no later than
24 December 27, 2008, Defendant was doing business and at all times herein mentioned has
25 continued to do business at various locations within the State of California as a retail business
26 selling food, drug, and general merchandise products from its Target, CityTarget, and
27 SuperTarget stores.

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1 7. Defendant sells its own private-label merchandise, in addition to popular branded
2 merchandise. Defendant's private-label merchandise includes, but is not limited to, the following
3 brands: Archer Farms, Market Pantry, Simply Balanced, Threshold, and up&up.

4 8. Defendant in the course of conducting its retail business failed to comply with
5 various state laws, including but not limited to those regulating the advertising, packaging, and
6 labeling of food and general merchandise, as more specifically alleged below.

7
8 **FIRST CAUSE OF ACTION**

9 **(Misleading Statements in Violation of Business and Professions Code §17500)**

10 9. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 8,
11 inclusive, of this Complaint as though fully set forth herein.

12 10. Beginning at an exact date unknown to Plaintiff, but commencing no later than
13 December 27, 2009, Defendant, with the intent to induce members of the public to purchase
14 goods in its California stores, made or caused to be made statements about those goods that were
15 untrue of misleading or had the capacity, likelihood, or tendency to deceive or confuse the public,
16 and that were known or by the exercise of reasonable care should have been known to be untrue
17 or misleading or having the capacity, likelihood, or tendency to deceive or confuse the public, in
18 violation of Business and Professions Code section 17500, including but not limited to:

19 A. Advertising, posting, marking, or quoting a price for a commodity and
20 charging at the point of sale a greater price;

21 B. Misrepresenting the weight of Defendant's branded products by way of
22 inaccurate statements on display panels or labels.

23 11. The unlawful conduct, acts, and omissions of Defendant in violation of section
24 17500 et seq. of the Business and Professions Code as set forth herein demonstrate the necessity
25 and legal basis for granting injunctive relief, disgorgement and restitution to victims and
26 imposing civil penalties pursuant to sections 17535 and 17536 of the Business and Professions
27 Code.

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SECOND CAUSE OF ACTION
(Unfair Competition in Violation of Business and Professions Code §17200)

12. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 11, inclusive, of this Complaint as though fully set forth therein.

13. Beginning at an exact date unknown to Plaintiff but commencing no later than December 27, 2008, Defendant engaged in acts of unfair competition within the meaning of Business and Professions Code section 17200, including but not limited to the following:

A. Making untrue or misleading statements in connection with the sale or offering for sale of goods to the public in California, which statements constituted false advertising within the meaning of Business and Professions Code section 17500, and in violation of that provision, as alleged in the First Cause of Action, above;

B. Selling commodities by gross weight, in violation of Business and Professions Code section 12023;

C. Selling commodities in less quantity than represented, in violation of Business and Professions Code section 12024;

D. At the time of sale of a commodity, charging an amount greater than the price, or computing an amount greater than a true extension of the price per unit, that is then advertised, posted, marked, displayed or quoted for that commodity, in violation of Business and Professions Code section 12024.2(a)(1); and

E. At the time of sale of a commodity, charging an amount greater than the lowest price posted on the commodity itself or on a shelf tag that corresponds to the commodity, notwithstanding any limitation of the time period for which the posted price is in effect, in violation of Business and Professions Code section 12024.2(a)(2).

14. The unlawful conduct, acts, and omissions of Defendant in violation of section 17200 et seq. of the Business and Professions Code as set forth herein demonstrate the necessity and legal basis for granting injunctive relief, disgorgement and restitution to victims and imposing civil penalties pursuant to sections 17203 and 17206 of the Business and Professions Code.

THIRD CAUSE OF ACTION

(Violation of 2008 Injunction Business and Professions Code §§17207 and 17535.5)

15. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 14, inclusive, of this Complaint as though fully set forth herein.

16. On October 16, 2008, the Contra Costa County Superior Court issued, pursuant to Business and Professions Code sections 17200 et seq. and 17500 et seq., a Final Judgment including a permanent injunction against Defendant in case number C08-02628 (hereinafter "2008 Injunction"). The 2008 Injunction is and has at all times relevant hereto been valid and enforceable. The 2008 Injunction permanently enjoined and restrained Defendant from directly or indirectly doing any of the following practices or acts, which constitute unfair competition, within the State of California:

A. Charging at the time of sale of a commodity, a value which is more than the price posted, marked, displayed, or quoted in violation of Business and Professions Code §12024.2(a);

B. Making or causing to be made any false or misleading statement to the public with respect to the price of items offered for sale.

C. Using any type of scanning system unless Target maintained for a period of four years from the date of entry of the 2008 Injunction a Compliance Program to enhance pricing accuracy and correct pricing errors as set forth more fully in paragraph 5 of the 2008 Injunction, hereby incorporated by reference.

17. Beginning at an exact date unknown to Plaintiff, but commencing no later than December 27, 2008, Defendant violated the 2008 Injunction by intentionally committing acts and/or practices in violation thereof, including but not limited to the acts and/or practices alleged in the first and second causes of action of this complaint.

18. Each intentional violation of the 2008 Injunction, and each day during which any

1 intentional violation of the 2008 Injunction continued, constitutes a separate and distinct violation
2 of Business and Professions Code sections 17207 and 17535.5, each of which constitutes the
3 basis for issuance of an enhanced civil penalty as provided for in that section.
4

5 **PRAYER**

6 **WHEREFORE**, PLAINTIFF PRAYS for judgment as follows:

7 1. That pursuant to Business and Professions Code sections 17203 and 17535,
8 Defendant and its officers, directors, employees, agents, representatives, successors and assigns,
9 and all persons, corporations or other entities acting in concert or participation with or for them,
10 be preliminarily, and thereafter permanently, restrained and enjoined from engaging in any acts
11 constituting false or misleading statements as defined in section 17500 of the Business and
12 Professions Code and unfair competition as defined in section 17200 of the Business and
13 Professions Code, including but not limited to the acts set forth in paragraphs 6 through 18,
14 above.
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16 2. That pursuant to Business and Professions Code Section 17536, Defendant be
17 assessed a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS
18 (\$2,500.00) for each and every violation of Business and Professions Code section 17500 as
19 alleged in the First Cause of Action.
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21 3. That pursuant to California Business and Professions Code Section 17206,
22 Defendant be assessed a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED
23 DOLLARS (\$2,500.00) for each and every violation of Business and Professions Code section
24 17200 as alleged in the Second Cause of Action.

25 4. That pursuant to California Business and Professions Code Sections 17207 and
26 17535.5, Defendant be assessed a civil penalty in the amount of SIX THOUSAND DOLLARS
27 (\$6,000.00) for each and every violation of Business and Professions Code section 17207 and
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1 17535.5 as alleged in the Third Cause of Action.

2 5. That pursuant to California Business and Professions Code Section 12015.5,
3 Defendant pay the incurred costs of the investigation in this action.

4 6. That Plaintiff recover reasonable restitution on behalf of consumers who suffered
5 loss by Defendant's acts of deceptive advertising and/or unfair competition.
6

7 7. That Plaintiff recover its cost of suit.

8 8. That Plaintiff be given such other further relief as the nature of this case may
9 require and this Court deems proper to fully and successfully dissipate the effects of the unlawful
10 and unfair acts complained of in this complaint.
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14 Date: 2/7/2015

EDWARD S. BERBERIAN
DISTRICT ATTORNEY

15
16 By: Andres H. Perez
17 Andres H. Perez
18 Deputy District Attorney

19 **NOTICE THAT THIS COMPLAINT IS DEEMED VERIFIED PURUSANT TO**
20 **SECTION 446 OF THE CODE OF CIVIL PROCEDURE**
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EXHIBIT 1

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