



**PLAINTIFF’S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES \_\_\_\_\_, individually, hereinafter referred to as “Plaintiff,” and complains of 99 CENTS ONLY STORES LLC, a California limited liability company, ACE HARDWARE CORPORATION, a Delaware corporation, AMAZON.COM INC., a Delaware corporation, BED BATH & BEYOND INC., a New York corporation, BIG LOTS INC., an Ohio corporation, COSTCO WHOLESALE CORPORATION, a Washington corporation, CVS HEALTH CORPORATION, a Delaware corporation, DOLLAR GENERAL CORPORATION, a Tennessee corporation, DOLLAR TREE INC., a Virginia Corporation, FAMILY DOLLAR STORES INC., a Delaware corporation, KOHL’S CORPORATION, a Wisconsin corporation, LOWE’S COMPANIES INC., a North Carolina corporation, MACY’S INC., a Delaware corporation, NEIMAN MARCUS GROUP LTD LLC, a Delaware limited liability company, NEWEGG.COM INC., a Delaware Corporation, NORDSTROM INC., a Washington corporation, NRDC EQUITY PARTNERS LLC, a Delaware limited liability company, OVERSTOCK.COM INC., a Delaware corporation, PENNEY OPCO LLC, a Virginia limited liability company, ROSS STORES INC., a Delaware corporation, TARGET CORP., a Minnesota corporation, THE HOME DEPOT INC., a Delaware corporation, THE KROGER CO., an Ohio corporation, THE TJX COMPANIES INC., a Delaware corporation, TRANSFORM SR BRANDS LLC, a Delaware limited liability company, WALGREEN CO., an Illinois corporation, WALMART INC, a Delaware corporation, WAYFAIR LLC, a Delaware limited liability company, hereinafter referred to collectively as “Defendants,” and for cause of action would respectfully show the Court as follows:

**I.**

**DISCOVERY CONTROL PLAN**

1.01 Discovery in this cause of action is intended to be conducted under Level 2, pursuant to Rules 190.1 and 190.3 of the Texas Rules of Civil Procedure.

**II.**

**PARTIES**

2.01 Plaintiff, \_\_\_\_\_, is an individual who is a resident of \_\_\_\_\_ County, \_\_\_\_\_. The last three digits of Plaintiff's driver license are \_\_\_\_\_ and the last four digits of his Social Security number are \_\_\_\_\_.

2.02 Defendant 99 CENTS ONLY STORES LLC is a California limited liability company with the address 4000 E. Union Pacific Avenue, City of Commerce, CA 90023, and that can be served through its Registered Agent at C T Corporation System, 330 N. Brand Blvd, Glendale, CA 81203.

2.03 Defendant ACE HARDWARE CORPORATION is a Delaware corporation with the address ...

**III.**

**VENUE AND JURISDICTION**

3.01 This civil action is brought under Texas Health and Safety Code Section 171.208. Section 171.210 provides that such civil actions may be brought in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Tex. Health & Safety Code § 171.210(a).

3.02 The courts of the State of Texas have jurisdiction to hear cases involving matters of Texas law. Texas' District Courts have jurisdiction to issue injunctive relief, which is the relief sought in this action.

3.03 Travis County is an appropriate venue because most of the Defendants transact business within the county, and it is their conduct of business transactions that give rise to this action.

3.04 Section 171.210 further provides that a civil action brought under Section 171.208 may not be transferred to a different venue without the written consent of all parties. Tex. Health & Safety Code § 171.210(b).

#### **IV.**

#### **CAUSE OF ACTION**

##### **Violation of Texas Health and Safety Code, Chapter 171, Subchapter H**

4.01 "Abortion" is defined by Texas statute as "the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives." Tex. Health & Safety Code § 245.002.

4.02 Section 171.202 of the Texas Health and Safety Code, "LEGISLATIVE FINDINGS," reads that the "legislature finds ... Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child ..." Tex. Health & Safety Code §§ 171.202(3).

4.03 Section 171.208 of the Texas Health and Safety Code provides in its language that "[a]ny person ... may bring a civil action against any person who ... intends to knowingly [engage] in conduct that aids or abets the performance or inducement of an abortion ... regardless of whether

the person knew or should have known that the abortion would be performed or induced in violation of this subchapter.” Tex. Health & Safety Code §§ 171.208(a), 171.208(a)(3), 171.208(a)(2).

4.04 Section 171.208 of the Texas Health and Safety Code uses the phrase “aids or abets (*emphasis added*)” rather than “aids and abets (*emphasis added*).” Tex. Health & Safety Code §§ 171.208. Forms of this phrase appear five (5) times within the statute, each time using the word “or” rather than the word “and.” Tex. Health & Safety Code §§ 171.208, 171.208(a)(2), 171.208(b)(1), 171.208(b)(2), 171.208(c).

4.05 By such language, logically the conduct in question needs not meet the definitions of both “aid” and “abet,” but instead needs only to meet one of the definitions to trigger the statute.

4.06 The Texas Health and Safety Code does not include a definition of the verb “aid.” In the Merriam-Webster dictionary, the definition of “aid” as a transitive verb, which is the form of the word used in the statute, is “to provide with what is useful or necessary in achieving an end.”<sup>1</sup>

4.07 The statute is written such that it is the “conduct that aid or abets (*emphasis added*)” rather than the person that aids or abets. *Id.* This particular language is repeated in Section 171.208(c), as it reads, “... or for the particular conduct that aided or abetted an abortion ... (*emphasis added*).” Tex. Health & Safety Code §§ 171.208(c).

4.08 The language of the statute plainly reads that it is irrelevant whether the person knowingly aids or abets an abortion; it is only relevant whether the conduct aids or abets an abortion. Tex. Health & Safety Code §§ 171.208(a)(2).

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/aid>, last visited September 9, 2021.

4.09 By logical operation of the phrase “... regardless of whether the person knew or should have known...” included in the statute, any possible *mens rea* is removed from the meaning of the phrase “aids or abets.” *Id.* This is consistent with, and supportive of, the statute’s language that the conduct aids or abets, as conduct itself cannot have a state of mind.

4.10 Each of the Defendants actively, purposefully, and consciously, directly or through a subsidiary, markets, distributes, and/or sells clothes hangers through its wholesale or retail operations online, at one or more physical locations, or both, into the State of Texas.

4.11 For each of the Defendants, among the clothes hangers that are sold, at least one type is composed partially or entirely of wire several inches in length.

4.12 For decades it has been and continues to be common knowledge among the American public at large that some pregnant women desperate for abortions will resort to the extremely dangerous method of abortion that is described as inserting the wire of a clothes hanger into the cervix and uterus.

4.13 The conduct of selling clothes hangers composed of several inches of wire into the State of Texas facilitates and indeed enables such abortions to occur.

4.14 The Defendants, as sellers of wire clothes hangers into Texas, provide “what is useful or necessary” for a pregnant woman to achieve an extremely dangerous self-induced abortion.

4.15 According to Texas Health & Safety Code Section 171.208(a)(2), it is irrelevant whether Defendants know that wire clothes hangers may be used in self-induced abortions; it is only relevant whether the Defendants knowingly engage in selling the wire clothes hangers.

4.16 Allowing the Defendants to continue to sell wire clothes hangers into the State of Texas runs contrary to the Texas Legislature’s stated finding that Texas “has compelling interests from the outset of a woman’s pregnancy in protecting the health of the woman and the life of the unborn child ...” Tex. Health & Safety Code §§ 171.202(3).

4.17 With a history of selling wire clothes hangers into Texas, and no publicized announcements to the contrary, it is readily apparent that Defendants intend to continue selling wire clothes hangers into Texas, even though such conduct aids extremely dangerous self-induced abortions.

**WHEREFORE** Plaintiff asks this court for INJUNCTIVE RELIEF sufficient to prevent Defendants from engaging in acts that aid in violations of Texas Health and Safety Code Section 171, together with an award of COSTS AND ATTORNEY’S FEES, as may be appropriate, and in accordance with, Texas Health and Safety Code Section 171.208(b)(1) and 171.208(b)(3).

Dated: \_\_\_\_\_, 2021

Respectfully submitted,

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