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**CASE MANAGEMENT CONFERENCE SET**

**ENDORSED FILED**

*San Francisco County Superior Court*

6 Attorneys for Plaintiff

CENTER FOR ENVIRONMENTAL HEALTH

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GORDON PARK-LI, Clerk

BY: CRISTINA E. BALITISTA  
Deputy Clerk

**DEPARTMENT 212**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

12 CENTER FOR ENVIRONMENTAL HEALTH, )

Case No. **07CO7-465288**

13 Plaintiff,

**COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

14 v.

16 POLYFORM PRODUCTS COMPANY; and  
17 Defendant DOES 1 through 200, inclusive,

Health & Safety Code §25249.6 *et seq.*;

(Other)

18 Defendants.

BY FAX

1 Plaintiff Center for Environmental Health (“Plaintiff”), in the public interest, and  
2 based on information and belief and investigation of counsel, except for information based on  
3 personal knowledge, hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This complaint seeks to remedy Defendants’ continuing failure to warn  
6 individuals in California that they are being exposed to Butyl Benzyl Phthalate (BBP) and Di-n-  
7 Hexyl Phthalate (DnHP), chemicals known to the State of California to cause birth defects or  
8 other reproductive harm. Such exposures have occurred, and continue to occur, through the  
9 manufacture, distribution, sale and consumer use of Defendants’ modeling clay containing BBP  
10 and DnHP (the “Products”). Consumers are exposed to BBP and DnHP when they use or  
11 otherwise handle the Products.

12 2. Under California’s Proposition 65, Health and Safety Code §25249.5 *et*  
13 *seq.*,<sup>1</sup> it is unlawful for businesses to knowingly and intentionally expose individuals in  
14 California to chemicals known to the State to cause birth defects or other reproductive harm  
15 without providing clear and reasonable warnings to individuals prior to their exposure. Despite  
16 the fact that Defendants’ Products expose consumers to BBP and DnHP, Defendants provide no  
17 warnings whatsoever about the reproductive hazards associated with BBP and DnHP exposure.  
18 Defendants’ conduct thus violates the warning provision of Proposition 65. Health & Safety  
19 Code §25249.6.

20 **PARTIES**

21 3. Plaintiff Center for Environmental Health (“CEH”) is a non-profit  
22 corporation dedicated to protecting the public from environmental health hazards and toxic  
23 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of  
24 California. CEH is a “person” within the meaning of Health & Safety Code §25249.11(a) and  
25 brings this enforcement action in the public interest pursuant to Health & Safety Code  
26 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has  
27 prosecuted a large number of Proposition 65 cases in the public interest. These cases have

28 <sup>1</sup> All statutory references herein are to California statutes, unless otherwise noted.



1 of the violations arise in the County of San Francisco.

2 **BACKGROUND FACTS**

3 11. The People of the State of California have declared by initiative under  
4 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth  
5 defects, or other reproductive harm.” Proposition 65, §1(b).

6 12. To effectuate this goal, Proposition 65 requires that individuals be  
7 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the  
8 State of California as known to cause birth defects or other reproductive harm unless the business  
9 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety  
10 Code §25249.6 states, in pertinent part:

11 No person in the course of doing business shall knowingly and  
12 intentionally expose any individual to a chemical known to the  
13 state to cause cancer or reproductive toxicity without first giving  
14 clear and reasonable warning to such individual. . . .

15 13. On December 2, 2005, the State of California officially listed BBP and  
16 DnHP as chemicals known to cause reproductive toxicity. BBP is specifically identified as a  
17 reproductive toxicant under the subcategory “developmental reproductive toxicity,” which means  
18 that it tends to harm the developing fetus. 22 California Code of Regulations (“CCR”) §12000(c).  
19 DnHP is specifically identified as a reproductive toxicant under two subcategories:  
20 (1) “female reproductive toxicity,” which means that it tends to harm the female reproductive  
21 system; and (2) “male reproductive toxicity,” which means that it tends to harm the male  
22 reproductive system. *Ibid.* On December 2, 2006, one year after they were listed as chemicals  
23 known to cause reproductive toxicity, BBP and DnHP became subject to the clear and reasonable  
24 warning requirement regarding reproductive toxins under Proposition 65. 22 CCR §12000(c);  
25 Health & Safety Code §25249.10(b).

26 14. Defendants’ Products contain sufficient quantities of BBP and DnHP such  
27 that individuals who handle the Products are exposed to BBP and DnHP through the average use  
28 of the Products. For example, ordinary consumers inhale BBP and DnHP from fumes generated  
when the Products are baked or after baking during normal use. Ordinary consumers are also

1 exposed to BBP and DnHP through direct ingestion when consumers place the Products in their  
2 mouths or via hand to mouth contact after consumers touch or handle the Products. In addition,  
3 ordinary consumers are exposed to BBP and DnHP through dermal absorption directly through  
4 the skin when consumers touch or handle the Products during normal use.

5 15. Defendants both know and intend that the Products contain BBP and  
6 DnHP. The Products typically use BBP and DnHP as plasticizing agents in the modeling clay.

7 16. Defendants both know and intend that individuals will handle, ingest, and  
8 otherwise use the Products, thus exposing them to BBP and DnHP.

9 17. Nevertheless, Defendants have, since December 2, 2006, and continuing to  
10 the present, exposed consumers to BBP and DnHP without providing clear and reasonable  
11 warnings regarding the reproductive hazards of BBP and DnHP.

12 18. Any person acting in the public interest has standing to enforce violations  
13 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
14 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
15 action within such time. Health & Safety Code §25249.7(d).

16 19. More than sixty days before naming each Defendant in this suit, Plaintiff  
17 provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney General, the  
18 District Attorneys of every county in California, the City Attorneys of every California city with  
19 a population greater than 750,000 and to Polyform. Each of the Notices contained the  
20 information required by Health & Safety Code §25249.7(d) and 22 CCR §12903(b).

21 20. Plaintiff also sent a Certificate of Merit for each Notice of Violation to the  
22 California Attorney General, the District Attorneys of every county in California, the City  
23 Attorneys of every California city with a population greater than 750,000, and to Polyform. In  
24 compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each Certificate of  
25 Merit certified that Plaintiff's counsel: (1) has consulted with one or more persons with relevant  
26 and appropriate experience or expertise who reviewed facts, studies or other data regarding the  
27 exposures to BBP and DnHP alleged in the Notice; and (2) based on the information obtained  
28 through such consultations, believes that there is a reasonable and meritorious case for a citizen



