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Attorneys for Plaintiff, Maureen Parker

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
UNLIMITED CIVIL JURISDICTION

MAUREEN PARKER,)
)
Plaintiff,)
)
and)
)
ALLSTAR MARKETING GROUP, LLC)
ALLSTAR PRODUCTS GROUP, LLC;)
FELKNOR VENTURES, LLC;)
TARGET CORPORATION)
QVC INC.,)
THE HOME DEPOT, INC.,)
WALGREEN CO.,)
ACE HARDWARE CORP.,)
WALMART STORES, INC.,)
TOY'S "R" US, INC.,)
FINGERHUT, INC.,)
BED, BATH & BEYOND, INC.)
SEARS ROEBUCK CO.)
K-MART CORPORATION,)
AMAZON.COM INC.,)
KOHL'S CORPORATION,)
BUY.COM)
DOES 1-2500 INCLUSIVE)
)
Defendants.)

CASE NO.: 37-2010-00106285-CU-TT-CTL
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
(Cal. Health & Safety Code § 25249.6 et seq.
and Cal. Business and Professions Code
§17200)

1
2 **NATURE OF THE ACTION**

3 1. This Complaint is a representative action brought by plaintiff Maureen Parker, in
4 the public interest of the citizens of the State of California, to enforce the people’s right to be
5 informed of the presence of lead, a toxic chemical found in the Topsy Turvy Upside Down
6 Planters (“Topsy Turvy”) sold in California.

7 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to
8 warn California citizens about their exposure to lead present in or on certain Topsy Turvy that
9 Defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
10 California.

11 3. High levels of lead are commonly found in Topsy Turvy that Defendants
12 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 et seq. (Proposition 65), “No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

18 5. California identified and listed Lead as a chemical known to cause birth defects
19 and other reproductive harm. Lead became subject to the warning requirements of Proposition 65
20 for developmental toxicity beginning on February 27, 1987 and for cancer toxicity on October 1,
21 1992. (*27 CCR § 27002; Cal. Health & Safety Code § 25249.6.*)

22 6. There is no safe level of exposure to Lead and even minute levels of Lead have
23 been shown to permanently reduce mental capacity. Davis, JM, Svengard, DJ; “Lead and Child
24 Development”; *Nature* 329: 297-300, 1987.

25 7. Lead shall hereinafter be referred to as the “LISTED CHEMICAL.”

26 8. Defendants manufacture, distribute and/or sell Topsy Turvy containing excessive
27 levels of the LISTED CHEMICAL including, but not limited to, the Topsy Turvy Tomato;
28

1 Topsy Turvy Pepper; Topsy Turvy Strawberry; Topsy Turvy Hummingbird; and, Topsy Turvy
2 Tomato With Stand.

3 9. . All such Topsy Turvy containing the LISTED CHEMICAL shall hereinafter be
4 referred to as the “PRODUCTS.”

5 10. Defendants` failure to warn consumers and/or other individuals in the State of
6 California about their exposure to the LISTED CHEMICAL in conjunction with defendant`s
7 manufacture, distribution and sale of the PRODUCTS is a violation of Proposition 65 and
8 subjects Defendants to enjoinder of such conduct as well as civil penalties for each such
9 violation.

10 11. For Defendants` violations of Proposition 65, plaintiff seeks preliminary
11 injunctive and permanent injunctive relief to compel Defendants to provide purchasers or users
12 of the PRODUCTS with the required warning regarding the health hazards of the LISTED
13 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

14 12. Plaintiff also seeks civil penalties against Defendants for their violations of
15 Proposition 65, as provides for by California Health & Safety Code § 25249.7(b).

16 **PARTIES**

17 13. Plaintiff Maureen Parker is a citizen of the City of Oceanside, County of San
18 Diego, in the State of California, who is dedicated to protecting the health of California citizens
19 through the elimination o reduction of toxic exposures from consumer Products, and brings this
20 action in the public interest pursuant to California Health & Safety Code § 25249.7.

21 14. Defendant ALLSTAR PRODUCTS GROUP, LLC (“ASP”) is a business entity
22 with ten or more employees doing business within the meaning of California Health & Safety
23 Code § 25249.11.

24 15. Defendant ALLSTAR MARKETING GROUP, LLC (“ASM”) is a business entity
25 with ten or more employees doing business within the meaning of California Health & Safety
26 Code § 25249.11.

1 16. Defendant FELKNOR VENTURES, LLC (“FELKNOR”) is a business entity
2 with ten or more employees doing business within the meaning of California Health & Safety
3 Code § 25249.11.

4 17. Defendant TARGET CORPORATION (“TARGET”) is a business entity with ten
5 or more employees doing business within the meaning of California Health & Safety Code §
6 25249.11.

7 18. Defendant QVC, INC (“QVC”) is a business entity with ten or more employees
8 doing business within the meaning of California Health & Safety Code § 25249.11.

9 19. Defendant THE HOME DEPOT, INC (“HOME DEPOT”) is a business entity
10 with ten or more employees doing business within the meaning of California Health & Safety
11 Code § 25249.11.

12 20. Defendant WALGREEN CO (“WALGREEN”) is a business entity with ten or
13 more employees doing business within the meaning of California Health & Safety Code §
14 25249.11.

15 21. Defendant ACE HARDWARE CORP (“ACE”) is a business entity with ten or
16 more employees doing business within the meaning of California Health & Safety Code §
17 25249.11.

18 22. Defendant WALMART STORES, INC (“WALMART”) is a business entity with
19 ten or more employees doing business within the meaning of California Health & Safety Code §
20 25249.11.

21 23. Defendant TOY’S “R” US, INC (“TOYS”) is a business entity with ten or more
22 employees doing business within the meaning of California Health & Safety Code § 25249.11.

23 24. Defendant FINGERHUT, INC (“FINGERHUT”) is a business entity with ten or
24 more employees doing business within the meaning of California Health & Safety Code §
25 25249.11.

26 25. Defendant BED, BATH & BEYOND, INC. (“BB&B”) is a business entity with
27 ten or more employees doing business within the meaning of California Health & Safety Code §
28 25249.11.

1 26. Defendant SEARS ROEBUCK CO. (“SEARS”) is a business entity with ten or
2 more employees doing business within the meaning of California Health & Safety Code §
3 25249.11.

4 27. Defendant K-MART CORPORATION (“K-MART”) is a business entity with
5 ten or more employees doing business within the meaning of California Health & Safety Code §
6 25249.11.

7 28. Defendant AMAZON.COM INC., (“AMAZON”) is a business entity with ten or
8 more employees doing business within the meaning of California Health & Safety Code §
9 25249.11.

10 29. Defendant KOHL’S CORPORATION (“KOHL’S”) is a business entity with ten
11 or more employees doing business within the meaning of California Health & Safety Code §
12 25249.11.

13 30. Defendant BUY.COM (“BUY.COM”) is a business entity with ten or more
14 employees doing business within the meaning of California Health & Safety Code § 25249.11.

15 31. Defendants ASM, APG, and FELKNOR manufacture, distribute, and/or offer the
16 PRODUCTS for sale or use in the State of California or implies by its conduct that it
17 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

18 32. Defendant DOES 1-20 (“MANUFACTURING DEFENDANTS”) are each
19 persons doing business within the meaning of California Health & Safety Code § 25249.11.

20 33. MANUFACTURER DEFENDANTS engage in the process of research, testing,
21 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
22 engage in the process of research, testing, designing, assembling, fabricating and/or
23 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

24 34. DISTRIBUTOR DEFENDANTS ASM, APG, FELKNOR, TARGET, QVC,
25 HOME DEPOT, WALGREEN, ACE, WALMART, TOYS, FINGERHUT, SEARS, K-MART,
26 AMAZON, BB&B, KOHL’S, BUY.COM. distribute, exchange, transfer, process and/or
27 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
28 the State of California

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 is brought does not specify any other basis of subject matter jurisdiction.

3 43. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that either are citizens of the State of California, have sufficient minimum contacts in
6 the State of California, or otherwise purposefully avail themselves of the California market.
7 DEFENDANTS’ purposeful avilment renders the exercise of personal jurisdiction by California
8 courts consistent with traditional notions of fair play and substantial justice.

9 **A. FIRST CAUSE OF ACTION**

10 **Violation of Cal. Health & Safety Code § 25249.6 et seq (Proposition 65)**

11 **(Against All Defendants)**

12 44. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
13 Paragraphs 1 through 43, inclusive.

14 45. The citizens of the State of California have expressly stated in the Safe Drinking
15 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
16 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
17 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

18 46. Proposition 65 states, “No person in the course of doing business shall knowingly
19 and intentionally expose any individual to a chemical known to the state to cause cancer or
20 productive toxicity without first giving clear and reasonable warning to such individual...
21 (*Id.*)”

22 47. On June 14, 2010 a Sixty-Day Notice violation, together with the requisite
23 certificate of merit, was provided to DEFENDANTS, and various public enforcement agencies
24 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, dating at least as far
25 back as March 16, 2010, purchasers and users in the State of California were being exposed to
26 the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,
27 without the individual purchasers and users first having been provided with a “clear and
28 reasonable warning” regarding such toxic exposures.

1 48. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
3 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
4 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
5 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
6 believes that such violations will continue to occur into the future.

7 49. After receipt of the claims asserted in the sixty-day notices of violation, the
8 appropriate public enforcement agencies have failed to commence and diligently prosecute a
9 cause of action against DEFENDANTS under Proposition 65.

10 50. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
11 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
12 limits.

13 51. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
14 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
15 CHEMICAL.

16 52. The LISTED CHEMICAL was present in or on the PRODUCTS in such away as
17 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
18 during the reasonably foreseeable use of the PRODUCTS.

19 53. The normal and reasonably foreseeable use of he PRODUCTS has caused and
20 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposures defined
21 by 27 CCR§ 25602(b).

22 54. DEFENDANTS knew or should have known that the normal and reasonably
23 foreseeable use of the PRODUCTS would expose individuals to the LISTED CHEMICAL
24 through dermal contact and/or ingestion.

25 55. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
26 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
27 accidental participation in the manufacture, distribution and/or offer for sale or use of
28 PRODUCTS to individuals in the State of California.

1 sale or use in California, without providing “clear and reasonable warnings” as detailed by 27
2 CCR § 25601, as to the harms associated with exposures to the LISTED CHEMICAL, and
3 thereby exposing persons within the State of California to the Listed Chemical caused by there
4 use of said PRODUCTS;

- 5 3. That the Court grant plaintiff her reasonable attorneys’ fees and cost of suit; and
6 4. That the Court grant such other and further relief as may be just and proper.

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9 Dated: November 19, 2010

Respectfully Submitted,

Law Offices of Stephen Ure, PC.

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11 By:  _____

Stephen Ure, Esq.
Attorney for Plaintiff
MAUREEN PARKER