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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 BED BATH & BEYOND, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

Case No. CIV 1005989

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff JOHN MOORE, in
3 the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in
5 exercise balls sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens and others about their exposure to DEHP present in or on certain
8 exercise balls that defendants manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

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

15 4. On October 23, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was therefore subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendants manufacture, import, distribute, and/or sell exercise balls containing
21 DEHP including, but not limited to, the *Yogablue 55 cm Balance Ball, RN 122786 (#8 76471*
22 *00388 4)*. All such exercise balls containing DEHP shall hereinafter be referred to as the
23 “PRODUCTS.”

24 6. Defendants’ failures to warn consumers and/or other individuals in the State of
25 California about their exposure to DEHP in conjunction with defendants’ sale of the
26 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
27 conduct as well as civil penalties for each such violation.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants)**

3 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 22, inclusive.

5 24. The citizens of the State of California have expressly stated in Proposition 65 that
6 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
7 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

8 25. Proposition 65 states, “No person in the course of doing business shall knowingly
9 and intentionally expose any individual to a chemical known to the state to cause cancer or
10 reproductive toxicity without first giving clear and reasonable warning to such individual...”
11 (*Id.*)

12 26. On September 1, 2010, a sixty-day notice of violation, together with the requisite
13 Certificate of Merit, was provided to BB&B and various public enforcement agencies stating
14 that as a result of the BB&B’S sales of the PRODUCTS, purchasers and users in the State of
15 California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
16 PRODUCTS, without the individual purchasers and users first having been provided with a
17 “clear and reasonable warning” regarding such toxic exposures.

18 27. DEFENDANTS have engaged in the manufacture, importation, distribution,
19 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
20 Code § 25249.6 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of
21 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
22 continued to occur beyond BB&B’S receipt of plaintiff’s sixty-day notice of violation. Plaintiff
23 further alleges and believes that such violations will continue to occur into the future.

24 28. After receipt of the claims asserted in the sixty-day notice of violation, the
25 appropriate public enforcement agencies have failed to commence and diligently prosecute a
26 cause of action against DEFENDANTS under Proposition 65.

27 29. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
28 use in California by DEFENDANTS contained DEHP above the allowable state limits.

1 30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
2 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
3 DEHP.

4 31. DEHP was present in or on the PRODUCTS in such a way as to expose
5 individuals to DEHP through dermal contact, and/or ingestion, during the reasonably
6 foreseeable use of the PRODUCTS.

7 32. The normal and reasonably foreseeable use of the PRODUCTS has caused and
8 continues to cause consumer exposures to DEHP, as such exposure is defined by 27 CCR §
9 25602(b).

10 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS would expose individuals to DEHP through dermal contact, and/or ingestion.

12 34. DEFENDANTS intended that such exposures to DEHP from the reasonably
13 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
14 in the manufacture, distribution, and/or offer for sale or use of PRODUCTS to individuals in the
15 State of California.

16 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 consumers and/or other individuals in the State of California who were or who could become
18 exposed to DEHP through dermal contact, and/or ingestion during the reasonably foreseeable
19 use of the PRODUCTS.

20 36. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
21 directly by California voters, individuals exposed to DEHP through dermal contact, and/or
22 ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
23 DEFENDANTS without a “clear and reasonable warning,” have suffered,
24 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate
25 remedy at law.

26 37. As a consequence of the above-described acts, DEFENDANTS are liable for a
27 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
28 Safety Code § 25249.7(b).

