

SAN FRANCISCO COUNTY
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

11
12 ANTHONY E. HELD, PH.D., P.E.,

13 Plaintiff,

14 v.

15 THE KITCHEN COLLECTION, LLC; and
16 DOES 1-150, inclusive,

17 Defendants.

Case No. **CGC-11-514769**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by plaintiff, ANTHONY E.
3 HELD, PH.D., P.E., in the public interest of the citizens of the state of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in children’s bags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive harms associated with their exposure to the DEHP
8 present in or on certain children’s bags that defendants manufacture, import, distribute, and/or
9 offer for sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the children’s bags that
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of
12 California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o 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 ...” (Health & Saf. Code, § 25249.6.)

18 5. On October 24, 2003, California identified and listed DEHP as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
20 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Cal.
21 Code Regs., tit. 27, § 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)

22 6. Defendants manufacture, distribute, and/or offer for sale children’s bags
23 containing DEHP including, but not limited to, *Kids 16 pc. Baking Set, #008-29214 (#7 97063*
24 *02452 3)*. All such children’s bags containing DEHP shall hereinafter be referred to as the
25 “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and/or other individuals in the state of
27 California not covered by California’s Occupational Safety Health Act, Labor Code section
28 6300 *et seq.*, about their exposure to DEHP and its potential to cause birth defects and other

1 reproductive harm in conjunction with Defendants' distribution, importation, manufacturing,
2 and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects Defendants to
3 enjoinder of such conduct as well as civil penalties for each such violation.

4 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
5 and permanent injunctive relief to compel defendants to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards of DEHP. (Health &
7 Safety Code, § 25249.7, subd. (a).)

8 9. Plaintiff also seeks civil penalties against defendants for their violations of
9 Proposition 65, as provided by Health & Safety Code section 25249.7(b).

10 **PARTIES**

11 10. Plaintiff, ANTHONY E. HELD, PH.D., P.E., is a citizen of the state of California
12 who is dedicated to protecting the health of California citizens through the elimination or
13 reduction of toxic exposures from consumer products; he brings this action in the public interest
14 pursuant to Health & Safety Code section 25249.7(d).

15 11. Defendant THE KITCHEN COLLECTION, LLC ("TKC") is a person in the
16 course of doing business within the meaning of Health & Safety Code section 25249.11.

17 12. Defendant TKC manufactures, distributes, and/or offers the PRODUCTS for sale
18 or use in the state of California, or implies by its conduct that it manufactures, distributes,
19 and/or offers the PRODUCTS for sale or use in the state of California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons in the course of doing business within the meaning of Health & Safety Code section
22 25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of researching,
24 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
25 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
26 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

27 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
28 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

1 state of California, or otherwise purposefully avails itself of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the state of California have stated expressly in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986 that they must be informed "about exposures to
10 chemicals that cause cancer, birth defects and other reproductive harm." (Health & Saf. Code, §
11 25249.6.)

12 26. Proposition 65 states, "[n]o person in the course of doing business shall
13 knowingly and intentionally expose any individual to a chemical known to the state to cause
14 cancer or reproductive toxicity without first giving clear and reasonable warning to such
15 individual...." (*Id.*)

16 27. On or about July 20, 2011, a sixty-day notice of violation, together with the
17 requisite certificate of merit, was provided to TKC and various public enforcement agencies
18 stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
19 the state of California were exposed to DEHP resulting from the reasonably foreseeable use of
20 the PRODUCTS, without the individual purchasers and users first having received a "clear and
21 reasonable warning" regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
23 the PRODUCTS for sale or use in violation of Health & Safety Code section 25249.6, and
24 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use
25 in violation of Health & Safety Code section 25249.6 has continued to occur beyond
26 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
27 believes that such violations will continue to occur into the future.

28 29. After receipt of the claims asserted in the sixty-day notice of violation, the

1 appropriate public enforcement agencies have failed to commence and diligently prosecute a
2 cause of action against DEFENDANTS under Proposition 65.

3 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
4 California by DEFENDANTS contained DEHP in an amount above the allowable state limits.

5 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
6 distributed, and/or offered for sale or use in California contained DEHP.

7 32. DEHP was present in or on the PRODUCTS in such a way as to expose
8 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
9 use of the PRODUCTS.

10 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
11 continues to cause, consumer exposures to DEHP, as such exposure is defined by California
12 Code of Regulations title 27, section 25602, subdivision (b).

13 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

15 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
16 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
17 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
18 individuals in the state of California.

19 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
20 consumers and/or other individuals in the state of California who were, or who could become,
21 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
22 use of the PRODUCTS.

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