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ENDORSED

2015 JAN 26 3:04

David H. Harash, Clerk of the Superior Court
County of Santa Clara, California

By J. CAO-NGUYEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

BEST BUY CO., INC.; HOT PROPERTIES!
MERCHANDISING, INC., and DOES 1-150,
inclusive,

Defendants.

Case No. 114CV273788

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

1 **NATURE OF THE ACTION**

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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical that is found in and on vinyl/PVC I.D. cards and charms that are sold in California.

6 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’
7 continuing failure to warn California citizens about the risks of exposures to DEHP present in
8 and on vinyl/PVC I.D. cards and charms manufactured, distributed, and offered for sale or use
9 to consumers throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on vinyl/PVC I.D. cards
11 and charms that defendants import, manufacture, distribute, ship, sell and/or offer for sale to
12 consumers throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and 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 & Safety Code § 25249.6.

18 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b).

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, vinyl/PVC I.D. cards and charms containing DEHP, including, but not
25 limited to, *The Simpsons Lanyard with I.D. Card and Charm, UPC #6 61304 97642 4*. All such
26 vinyl/PVC I.D. cards and charms containing DEHP are referred to collectively hereinafter as the
27 “PRODUCTS.” DEHP is referred to hereinafter as the “LISTED CHEMICAL.”
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1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
4 person in the course of doing business within the meaning of Health and Safety Code sections
5 25249.6 and 25249.11.

6 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
7 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
8 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
9 California.

10 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
11 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
12 and 25249.11.

13 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
15 in the State of California.

16 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
17 the course of doing business within the meaning of Health and Safety Code sections 25249.6
18 and 25249.11.

19 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
20 State of California.

21 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
22 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
24 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
25 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

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1 22. BEST BUY, HOT PROPERTIES, MANUFACTURER DEFENDANTS,
2 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively
3 referred to as "DEFENDANTS."

4 **VENUE AND JURISDICTION**

5 23. Venue is proper in the County of Santa Clara, pursuant to Code of Civil
6 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
7 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
8 wrongful conduct occurred, and continue to occur, in this county, and/or because
9 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
10 respect to the PRODUCTS.

11 24. The California Superior Court has jurisdiction over this action pursuant to
12 California Constitution Article VI, section 10, which grants the Superior Court "original
13 jurisdiction in all causes except those given by statute to other trial courts." The statute under
14 which this action is brought does not specify any other basis of subject matter jurisdiction.

15 25. The California Superior Court has jurisdiction over DEFENDANTS based on
16 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
17 association that is a citizen of the State of California, has sufficient minimum contacts in the
18 State of California, and/or otherwise purposefully avails itself of the California market.
19 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
20 California courts consistent with traditional notions of fair play and substantial justice.

21 **FIRST CAUSE OF ACTION**

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

23 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
24 Paragraphs 1 through 25, inclusive.

25 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
26 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

3 28. Proposition 65 states, “[n]o person in the course of doing business shall
4 knowingly and intentionally expose any individual to a chemical known to the state to cause
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such
6 individual” Health & Safety Code § 25249.6.

7 29. On June 20, 2014, plaintiff’s sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to BEST BUY, HOT PROPERTIES and certain
9 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
10 PRODUCTS containing the LISTED CHEMICAL, workers, consumers, and other individuals
11 in the State of California were being exposed to the LISTED CHEMICAL resulting from their
12 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
13 having received a “clear and reasonable warning” regarding such toxic exposures, as required
14 by Proposition 65.

15 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
19 continuous in nature, and will continue to occur in the future.

20 31. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
21 enforcement agencies have failed to commence and diligently prosecute a cause of action
22 against DEFENDANTS under Proposition 65.

23 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
24 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
25 reasonably foreseeable uses of these products result in exposures that require a “clear and
26 reasonable” warning under Proposition 65.

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1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

4 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
5 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

6 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
7 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
8 defined by title 27 of the California Code of Regulations, section 25602(b).

9 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
10 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
11 and/or ingestion.

12 37. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
13 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
14 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
15 use to individuals in the State of California.

16 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 workers, consumers and other individuals in California not covered by California’s
18 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,
19 exposed to the LISTED CHEMICAL.

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

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