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M. SALCIDO, DEPUTY

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 UNLIMITED CIVIL JURISDICTION

13 MICHAEL DIPIRRO,

14 Plaintiff,

15 v.

16 TOPS PRODUCTS; R.R. DONNELLEY &
17 SONS COMPANY; STAPLES, INC.; and
18 DOES 1-150, inclusive,

19 Defendants.

Case No. **RG15787396**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MICHAEL
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”) and Diisononyl
5 phthalate (“DINP”), toxic chemicals found in binders sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP and DINP present in and on the
8 binders manufactured, distributed, and offered for sale or use to consumers throughout the state
9 of California.

10 3. High levels of DEHP and DINP are commonly found in and on the binders that
11 defendants manufacture, distribute, and offer for sale to consumers throughout the state of
12 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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and 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. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
24 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
25 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
26 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP and DINP are referred to
27 hereinafter as the “LISTED CHEMICALS.”
28

1 14. Defendant R.R. DONNELLEY & SONS COMPANY (“R.R. DONNELLEY”) is
2 a person in the course of doing business within the meaning of Health and Safety Code section
3 25249.11.

4 15. R.R. DONNELLEY manufactures, distributes, and/or offers the PRODUCTS for
5 sale or use in the state of California, or implies by its conduct that it manufactures, distributes,
6 and/or offers the PRODUCTS for sale or use in the state of California.

7 16. Defendant STAPLES, INC. (“STAPLES”) is a person in the course of doing
8 business within the meaning of Health and Safety Code section 25249.11.

9 17. STAPLES distributes, and/or offers the PRODUCTS for sale or use in the state of
10 California, or implies by its conduct that it distributes, and/or offers the PRODUCTS for sale or
11 use in the state of California.

12 18. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
13 persons in the course of doing business within the meaning of Health and Safety Code section
14 25249.11.

15 19. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
16 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
17 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
18 California.

19 20. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
20 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

21 21. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
22 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
23 in the state of California.

24 22. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
25 the course of doing business within the meaning of Health and Safety Code section 25249.11.

26 23. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
27 state of California.

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1 **FIRST CAUSE OF ACTION**

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

3 29. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 28, inclusive.

5 30. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

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

13 32. On April 21, 2015, plaintiff’s sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to TOPS, R.R. DONNELLEY, STAPLES and
15 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
16 PRODUCTS containing the LISTED CHEMICALS, purchasers and users in the state of
17 California were being exposed to the LISTED CHEMICALS resulting from the reasonably
18 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
19 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
20 required by Proposition 65.

21 33. DEFENDANTS have engaged in the manufacture, distribution, and offering of
22 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
23 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
24 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
25 and will continue to occur in the future.

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

2 35. The PRODUCTS manufactured, distributed, and offered for sale or use in
3 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the
4 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
5 65.

6 36. DEFENDANTS knew or should have known that the PRODUCTS they
7 manufacture, distribute, and offer for sale or use in California contain the LISTED
8 CHEMICALS.

9 37. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
10 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
11 use.

12 38. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
13 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
14 defined by California Code of Regulations title 27, section 25602(b).

15 39. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
16 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact
17 and/or ingestion.

18 40. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
19 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
20 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
21 sale or use to individuals in the state of California.

22 41. DEFENDANTS failed to provide a “clear and reasonable warning” to those
23 consumers and other individuals in the state of California who were or who would become
24 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
25 reasonably foreseeable uses of the PRODUCTS.

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

4 43. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
5 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
6 for each violation.

7 44. As a consequence of the above-described acts, Health and Safety Code
8 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

12 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
13 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

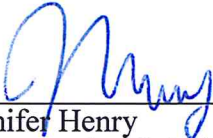
14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California without first providing a “clear and
17 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
18 *seq.*, as to the harms associated with exposures the LISTED CHEMICALS;

19 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

20 4. That the Court grant such other and further relief as may be just and proper.

21 Dated: September 25, 2015

22 Respectfully Submitted,
23 BUSH & HENRY

24 By: 
25 Jennifer Henry
26 Attorneys for Plaintiff
27 MICHAEL DIPIRRO
28