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FILED  
ALAMEDA COUNTY

Feb 16 2017 ~~8:10~~

CLERK OF THE SUPERIOR COURT  
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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

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

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

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1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint (“Complaint”) is a representative action brought  
3 by plaintiff MICHAEL DIPIRRO in the public interest of the citizens of the State of California to  
4 enforce the People’s right to be informed of the presence of Diisodecyl phthalate (“DIDP”) and  
5 Diisononyl 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 DIDP 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 DIDP 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 April 20, 2007, California identified and listed  
19 DIDP as a chemical known to cause birth defects and other reproductive harm. DIDP became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on April 20,  
21 2008. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. Pursuant to Proposition 65, on December 20, 2013, California identified and listed  
23 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable  
24 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,  
25 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DIDP and DINP are referred to  
26 hereinafter as the “LISTED CHEMICALS.”



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 one or more Proposition 65 listed chemicals, purchasers and users in  
17 the state of California were being exposed to the Proposition 65 listed chemicals resulting from  
18 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
19 first having been provided with a “clear and reasonable warning” regarding such toxic  
20 exposures, as required by Proposition 65. On December 9, 2016, plaintiff’s supplemental sixty-  
21 day notice of violation, together with the requisite certificate of merit, was provided to TOPS,  
22 R.R. DONNELLEY, STAPLES and certain public enforcement agencies stating that, as a result  
23 of DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICALS, purchasers  
24 and users in the state of California were being exposed to the LISTED CHEMICALS resulting  
25 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
26 users first having been provided with a “clear and reasonable warning” regarding such toxic  
27 exposures, as required by Proposition 65.

1           33. DEFENDANTS have engaged in the manufacture, distribution, and offering of  
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
3 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
4 notices of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,  
5 and will continue to occur in the future.

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

9           35. The PRODUCTS manufactured, distributed, and offered for sale or use in  
10 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the  
11 allowable state limits, such that they require a "clear and reasonable" warning under Proposition  
12 65.

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

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

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

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

25           40. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from  
26 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-

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1 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for  
2 sale or use to individuals in the state of California.

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

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

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

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

18 **PRAYER FOR RELIEF**

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

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

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

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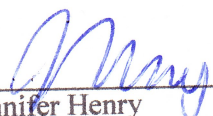


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4. That the Court grant such other and further relief as may be just and proper.

Dated: February 13, 2017

Respectfully Submitted,  
BUSH & HENRY

By:   
Jennifer Henry  
Attorneys for Plaintiff  
MICHAEL DIPIRRO