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Superior Court of California
County of Los Angeles

FEB 03 2016

Sherril R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 ANTHONY FERREIRO,
12 Plaintiff,

13 vs.

14 BAGMAX INDUSTRIAL, INC. and
15 KITCHEN DEPOT 1 INC.,
16 Defendants.

CASE NO.:

BC 6 09 192

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

BY FAX

17
18
19 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the
20 following cause of action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

22 1. Plaintiff brings this representative action on behalf of all California citizens to
23 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
24 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,
25 "[n]o person in the course of doing business shall knowingly and intentionally expose any
26 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
27 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.
28

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical found in
4 lunch boxes sold and distributed in California by defendants Bagmax Industrial, Inc. (“Bagmax”)
5 and Kitchen Depot 1 Inc. (“Kitchen Depot”, collectively “Defendants”).

6 3. DEHP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
8 known to the State to cause cancer and it has come under the purview of Proposition 65
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
11 known to cause reproductive toxicity.

12 4. Proposition 65 requires all businesses with ten (10) or more employees that
13 operate within California or sell products therein to comply with Proposition 65 regulations.
14 Included in such regulations is the requirement that businesses must label any product containing
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
16 intentionally” exposing any person to it.

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
20 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
21 Code § 25249.7.

22 6. Plaintiff alleges that Defendants produced, manufactured, distributed, imported,
23 sold, and offered for sale, without the required warning, lunch boxes in California containing
24 DEHP. These products include, but are not limited to, *Small Lunch Box, Style# LN-11S* (the
25 “Product”).

26 7. Defendants’ failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture, and
28

1 distribution of the Product is a violation of Proposition 65 and subjects Defendants to the
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendant for their violations of Proposition
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Product with the required warnings related to
7 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
8 Code § 25249.7(a).

9 **PARTIES**

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. He brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant Bagmax, a California corporation, designs and manufactures travel
15 equipment. Through its business, Bagmax effectively manufactures, imports, distributes, sells,
16 and offers the Product for sale or use in the State of California, or it implies by its conduct that it
17 manufactures, imports, distributes, sells, and offers the Product for sale or use in the State of
18 California. Bagmax can be served care of Joe Weikai Chang at 156 S. Anderson Street, Los
19 Angeles, CA 90033.

20 12. Defendant Kitchen Depot, a California corporation, is a wholesaler and retailer of
21 home goods. Through its business, Kitchen Depot effectively imports, distributes, sells, and
22 offers the Product for sale or use in the State of California, or it implies by its conduct that it
23 imports, distributes, sells, and offers the Product for sale or use in the State of California.
24 Kitchen Depot can be served care of Crist Vartanian at 5331 W. San Fernando Road, Los
25 Angeles, CA 90039.

26 13. Upon information and belief, Plaintiff avers that at all relevant times herein,
27 Defendants were each a person doing business within the meaning of Health and Safety Code §
28 25249.11(b).

1 **VENUE AND JURISDICTION**

2 14. Venue is proper in the County of Los Angeles because one or more of the
3 instances of wrongful conduct occurred, and continue to occur in this county and because
4 Defendants conducted, and continue to conduct, business in the County of Los Angeles with
5 respect to the Product.

6 15. This Court has jurisdiction over this action pursuant to California Constitution
7 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
8 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
9 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
10 this Court has jurisdiction over this lawsuit. This Court has jurisdiction over Defendants because
11 they are either a citizen of the State of California, have sufficient minimum contacts with the
12 State of California, are registered with the California Secretary of State as foreign corporations
13 authorized to do business in the State of California, and/or have otherwise purposefully availed
14 themselves of the California market. Such purposeful availment has rendered the exercise of
15 jurisdiction by California courts consistent and permissible with traditional notions of fair play
16 and substantial justice.

17 **SATISFACTION OF NOTICE REQUIREMENTS**

18 16. On June 26, 2015, Plaintiff gave notice of alleged violation of Health and Safety
19 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
20 DEHP contained in the Product without proper warning, subject to a private action to Defendants
21 and to the California Attorney General’s office and the offices of the County District attorneys
22 and City Attorneys for each city with a population greater than 750,000 persons wherein the
23 herein violations allegedly occurred.

24 17. The Notice complied with all procedural requirements of Proposition 65 including
25 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
26 least one person with relevant and appropriate expertise who reviewed relevant data regarding
27 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
28 private action.

1 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
2 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
3 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
4 and offering of the Product to consumers in California

5 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
6 Complaint.

7 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
8 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per
9 violation.

10 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
11 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
14 following relief:

- 15 A. That the court assess civil penalties against each Defendant in the amount
16 of \$2,500 per day for each violation in accordance with Health and Safety
17 Code § 25249.7(b);
- 18 B. That the court preliminarily and permanently enjoin Defendants
19 mandating Proposition 65 compliant warnings on the Product;
- 20 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 21 D. That the court grant any further relief as may be just and proper.

22 Dated: February 2, 2016

BRODSKY & SMITH, LLC

23 By: 

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