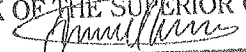


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ENDORSED
FILED
ALAMEDA COUNTY

NOV 29 2016

CLERK OF THE SUPERIOR COURT
By 
JANIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 PRECILA BALABBO,
11 Plaintiff,

12 vs.

13 THE MICHAELS COMPANIES, INC.,
14 MICHAELS STORES PROCUREMENT
15 COMPANY, INC.,
Defendants.

Case No.: RG16840526

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

BY FAX

16 Plaintiff Precila Balabbo (“Plaintiff” or “Ferreiro”), by and through her attorneys, alleges
17 the following cause of action in the public interest of the citizens of the State of California.
18

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
Recollection photo albums, UPC Number 886946270567 (the “Product”) that is manufactured,

1 sold, and/or distributed by defendants Michaels Stores Procurement Company, Inc., and The
2 Michaels Companies, Inc. (collectively, “Michaels” or “Defendants”) in California.

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

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

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

19 6. Plaintiff alleges that Defendants distribute, manufacture, produce, import, sell,
20 and/or offer for sale in California the Product without the required warning that the Product
21 exposes users, purchasers, workers and other individuals to the chemical DEHP.

22 7. Defendants’ failure to warn consumers, workers, and other individuals in
23 California of the health hazards associated with exposure to DEHP in conjunction with the sale,
24 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
25 Defendants to the enjoinder and civil penalties described herein.

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

28

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

5 **PARTIES**

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

10 11. Defendant Michaels Stores Procurement Company, Inc. distributes arts and crafts
11 specialty and home decor products and effectively manufactures, imports, distributes, sells,
12 and/or offers the Product for sale or use in California, or it implies by its conduct that it
13 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
14 California. Michaels Stores Procurement Company, Inc. maintains a registered agent for service
15 of process at c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington,
16 DE 19808.

17 13. Defendant The Michaels Companies, Inc. is an American arts and crafts retail
18 chain that effectively manufactures, imports, distributes, sells, and/or offers the Product for sale
19 or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells,
20 and/or offers the Product for sale or use in the State of California. Defendant The Michaels
21 Companies, Inc. can be served c/o Corporation Service Company, 2711 Centerville Road, Suite
22 400, Wilmington, DE 19808.

23 14. Upon information and belief, Plaintiff avers that each defendant acted as an
24 employee, servant, or agent of each other defendant at all times relevant to this action. Plaintiff
25 further avers that in conducting the activities alleged in this Complaint, the Defendants acted
26 within the scope of their agency or similarly situated relationship as toward one another.
27 Therefore the Defendants acted with consent, permission, and authorization of each other in
28 relation to all acts related to the scope of this Complaint.

1 15. Upon information and belief, Plaintiff avers that at all relevant times herein, each
2 defendant was a person doing business within the meaning of Health and Safety Code §
3 25249.11(b) and that each and every defendant had ten (10) or more employees at all relevant
4 times.

5 **VENUE AND JURISDICTION**

6 16. Venue is proper in the County of Alameda, because one or more of the instances
7 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
8 conducted, and continue to conduct, business in the County of Alameda with respect to the
9 Product.

10 17. This Court has jurisdiction over this action pursuant to California Constitution
11 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
12 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
13 enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore,
14 this Court has jurisdiction over this lawsuit.

15 18. This Court has jurisdiction over Defendants as each defendant either is a citizen
16 of the State of California, has sufficient minimum contacts with the State of California, is
17 registered with the California Secretary of State as foreign corporations authorized to do business
18 in the State of California, and/or have otherwise purposefully availed themselves of the
19 California market. Such purposeful availment has rendered the exercise of jurisdiction by
20 California courts consistent and permissible with traditional notions of fair play and substantial
21 justice.

22 **SATISFACTION OF NOTICE REQUIREMENTS**

23 19. On May 16, 2016, Plaintiff gave notice of alleged violations of Health and Safety
24 Code § 25249.6, (the "Notice") concerning the exposure of California citizens to DEHP in the
25 Product without proper warning, subject to a private action to the Defendants and to the
26 California Attorney General's office and the offices of the County District attorneys and City
27 Attorneys for each city with a population greater than 750,000 persons wherein the herein
28 violations allegedly occurred.

1 the body during viewing. The photo album cover can be expected to emit gas phase DEHP into
2 the air over the lifetime of the product. This gas phase DEHP can be inhaled or absorbed to dust
3 that can be subsequently ingested. If the photo album is stored or transported in a carrier, DEHP
4 that leaches from the cover may contaminate other articles contained within the storage carrier
5 that are subsequently used b people. Finally, while mouthing of the product does not seem
6 likely, some amount of exposure through ingestion can occur by touching the product with
7 subsequent touching of the user’s hand to mouth. For instance, the user may moisten their
8 fingers when turning pages of the album.

9 29. Plaintiff, based on his best information and belief, avers that such exposures will
10 continue every day until clear and reasonable warnings are provided to Product purchasers and
11 users or until this known toxic chemical are removed from the Product.

12 30. Defendants have knowledge that the normal and reasonably foreseeable use of the
13 Product expose individuals to DEHP, and Defendants intend that exposure to DEHP will occur
14 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
15 sale and offering of the Product to consumers in California

16 31. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
17 Complaint without success.

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

21 33. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
22 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
25 following relief:

- 26 A. That the court assess civil penalties against each and every defendant in
27 the amount of \$2,500 per day for each violation in accordance with Health
28 and Safety Code § 25249.7(b);

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- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: November 29, 2016

BRODSKY & SMITH, LLC

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