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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 16 2017

CLERK OF THE SUPERIOR COURT,
By Lanette Buffin, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 KAREN CALACIN,

11 Plaintiff,

12 vs.

13 SNAP UPS, LTD.,

14 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

16 Plaintiff Karen Calacin ("Plaintiff" or "Calacin"), 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 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People's right to be informed of the health
27 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
28

1 Snap Ups Super Duper Diaper Bags and Changing Pads (the “Product”) that is manufactured,
2 sold, and/or distributed by defendant Snap Ups, Ltd. (“Snap Ups” or “Defendant”) 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 Defendant distributes, manufactures, produces, imports, sells,
20 and/or offers for sale in California the Product without the required warning that the Product
21 exposes users, purchasers, and other individuals to the chemical DEHP.

22 7. Defendant’s 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 Defendant to the enjoinder and civil penalties described herein.

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

28

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

PARTIES

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

11. Defendant Snap Ups manufactures, imports, distributes, sells, and/or offers the Product for sale or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

13. Defendant Snap Ups maintains a registered agent for service of process at c/o N. H. Optical Co., 245 West 29th Street, New York, NY 10001.

14. Upon information and belief, Plaintiff avers that at all relevant times herein, defendant was a person doing business within the meaning of Health and Safety Code § 25249.11(b).

VENUE AND JURISDICTION

15. Venue is proper in the County of Alameda, because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendant conducted, and continue to conduct, business in the County of Alameda with respect to the Product.

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

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

7 **SATISFACTION OF NOTICE REQUIREMENTS**

8 18. On August 19, 2016, Plaintiff gave notice of alleged violations of Health and
9 Safety Code § 25249.6, (the "Notice") concerning the exposure of California citizens to DEHP in
10 the Product without proper warning, subject to a private action to the Defendant and to the
11 California Attorney General's office and the offices of the County District attorneys and City
12 Attorneys for each city with a population greater than 750,000 persons wherein the herein
13 violations allegedly occurred.

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

19 20. After receiving the Notice, and to Plaintiff's best information and belief, none of
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
21 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
22 are the subject of Plaintiff's notice of violation.

23 21. Plaintiff is commencing this action more than sixty (60) days from the date of the
24 Notice to Defendant, as required by law.

25 **FIRST CAUSE OF ACTION**

26 **(By Plaintiff against all Defendant for the Violation of Proposition 65)**

27 22. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 21 of
28 this complaint as though fully set forth herein.

1 23. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
2 and/or retailer of the Product.

3 24. The Product contains DEHP, a hazardous chemical found on the Proposition 65
4 list of a chemical known to be hazardous to human health.

5 25. The Product does not comply with the Proposition 65 warning requirements.

6 26. Plaintiff, based on his best information and belief, avers that at all relevant times
7 hereto, and at least since August 3, 2016, continuing until the present, that Defendant has
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DEHP without providing required warnings under Proposition 65.

10 27. The exposures that are the subject of this notice result from the purchase,
11 acquisition, handling and recommended use of the product. Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
13 DEHP by dermal absorption through hands, or worn on the user's shoulder. The product can be
14 expected to emit gas phase DEHP into the air over the lifetime of the product. Concentrations of
15 gas phase DEHP can be expected to build within the small, enclosed interior of the bag. This gas
16 phase DEHP can potentially be absorbed to the surface of the interior contents of the bag, such as
17 diapers or the diaper pad. When handled, these items can provide an indirect source of dermal
18 transfer of DEHP to the user's hands. Of particular concern is the absorption of DEHP that is
19 absorbed to diapers stored within the bag. Finally, while mouthing of the product does not seem
20 likely, some amount of exposure through ingestion can occur by touching the product with
21 subsequent touching of the user's hand to mouth, or if the interior contents should become
22 contaminated with DEHP that has leached from the diaper bag and these contents subsequently
23 come into oral contact or are ingested by the user or an infant.

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

27 29. Defendant has knowledge that the normal and reasonably foreseeable use of the
28 Product expose individuals to DEHP, and Defendant intends that exposure to DEHP will occur

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
2 sale and offering of the Product to consumers in California.

3 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
4 Complaint without success.

5 31. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
6 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

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

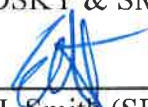
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
11 following relief:

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

19
20 Dated: March 16, 2017

BRODSKY & SMITH, LLC

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