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ENDORSED
FILED
ALAMEDA COUNTY

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By SUE PESKO

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 GABRIEL ESPINOSA,
14 Plaintiff,
15 v.
16 PARTY UNLIMITED SUPPLIES, INC.,
17 Defendant.

Case No.: **RG17852160-**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
*(Violation of Health & Safety Code §25249.5
et seq.)*

18 Plaintiff Gabriel Espinosa, by and through his attorneys, alleges the following cause of
19 action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

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

BY FAX

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) and Diisononyl phthalate
4 (DINP), toxic chemicals found in snorkel gear and party supplies sold and/or distributed by
5 defendant Party Unlimited Supplies, Inc. (“Party Unlimited” or “Defendant”) in California.

6 3. DEHP and DINP are harmful chemicals known to the State of California to cause
7 cancer and reproductive toxicity. On January 1, 1988, and on December 20, 2013, the State of
8 California listed DEHP and DINP, respectively, as chemicals known to the State to cause cancer
9 and these chemicals have come under the purview of Proposition 65 regulations since that time.
10 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On
11 October 24, 2003, the State of California listed DEHP as a chemical known to cause
12 reproductive toxicity.

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

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

23 6. Plaintiff alleges that Defendant purchases for sale, distributes, imports, sells,
24 and/or offers for sale in California, without the required warning, IBEX children’s swim mask,
25 and snorkel sets, including but not limited to, UPC No. 806661316463 (“Product” or “Products”)
26 that contain DEHP and DINP.

27 7. Defendant’s failure to warn consumers and other individuals in California of the
28 health hazards associated with exposure to DEHP and DINP in conjunction with the sale, and/or

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

3 8. Plaintiff seeks civil penalties against Defendant for its 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 Defendant to provide purchasers or users of the Product with the required warnings related to the
7 dangers and health hazards associated with exposure to DEHP and DINP pursuant to Health and
8 Safety 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 Party Unlimited is a party rental and supply store, and seller of
15 children's products. Through its business, Party Unlimited effectively purchases for sale,
16 imports, distributes, sells, and/or offers the Product for sale or use in the State of California, or it
17 implies by its conduct that it purchases for sale, imports, distributes, sells, and/or offers the
18 Product for sale or use in the State of California. Party Unlimited maintains an agent for service
19 of process at c/o Salman Hajidamji, 5567 Sepulveda Blvd., Culver City, CA 90230.

20 12. Defendant Party Unlimited is a "person" in the course of doing business within
21 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

22 **VENUE AND JURISDICTION**

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

27 14. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

4 15. This Court has jurisdiction over Defendant because it is either a citizen of the
5 State of California, has sufficient minimum contacts with the State of California, is registered
6 with the California Secretary of State as foreign corporations authorized to do business in the
7 State of California, and/or has otherwise purposefully availed itself of the California market.
8 Such purposeful availment has rendered the exercise of jurisdiction by California courts
9 consistent and permissible with traditional notions of fair play and substantial justice.

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 16. On September 30, 2016, Plaintiff gave notice of alleged violation of Health and
12 Safety Code § 25249.6 (the "Notice") to Party Unlimited concerning the exposure of California
13 citizens to DEHP and DINP contained in the Product without proper warning, subject to a private
14 action to Party Unlimited and to the California Attorney General's office and the offices of the
15 County District attorneys and City Attorneys for each city with a population greater than 750,000
16 persons wherein the herein violations allegedly occurred.

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

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

26 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
27 Notice to Party Unlimited, as required by law.

28

1 **FIRST CAUSE OF ACTION**

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

3 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
4 this complaint as though fully set forth herein.

5 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
6 and/or retailer of the Product.

7 22. The Product contains DEHP and DINP, hazardous chemicals found on the
8 Proposition 65 list of chemicals known to be hazardous to human health.

9 23. The Product does not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since September 14, 2016, continuing until the present, that Party Unlimited
12 has continued to knowingly and intentionally expose California users and consumers of the
13 Product to DEHP and DINP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals is through dermal exposure and direct mouthing. Dermal exposure
17 to DEHP and DINP through the user's hands can occur during fitting and removal of the Kid's
18 Swim Mask and Snorkel Set. Should the mask and snorkel come into contact with water or
19 humidity, as may be expected during snorkeling, or the wearer touch the mask or snorkel with
20 wet, bare hands, increased dermal transport of DEHP is possible as aqueous DEHP skin
21 permeation rates have been reported to be faster than neat DEHP permeation. The snorkel mask
22 strap is expected to be in contact with the users scalp during use and dermal exposure to DEHP
23 and DINP can occur in these areas contacted by the strap. If stored or transported in a carrier,
24 DEHP and DINP can leach from the Kid's Swim Mask and Snorkel Set and contaminate articles
25 placed inside the carrier that are subsequently handled or used. Ingestion of DEHP and DINP
26 through direct mouthing will occur when the user places the snorkel mouthpiece in their moth
27 during use. Finally, some amount of exposure through ingestion can occur by touching the
28 product, with subsequent touching of the user's hand to mouth.

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