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ENDORSED
FILED
ALAMEDA COUNTY

JAN 23 2017

CLERK OF THE SUPERIOR COURT
By Molly J. Kautz
Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

KAREN CALACIN,

Plaintiff,

v.

SWEET HOME CARE PRODUCT, INC.,

Defendant.

Case No.: **RG17846635**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

Plaintiff Karen Calacin, by and through his attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

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

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 bath pillows sold and/or distributed by defendant Sweet Home Care Product, Inc. ("SHCP" or
5 "Defendant") in California.

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[s] or threaten[s] to violate" the statute. Health &
21 Safety Code § 25249.7.

22 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
23 and/or offers for sale, without the required warning, SHCP Deluxe Bath Pillows, UPC No. 0
24 48247 35033 5 ("Product" or "Products") in California containing DEHP.

25 7. Defendant's failure to warn consumers and other individuals in California of the
26 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
27 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the
28 enjoinder and civil penalties described herein.

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

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 products 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 SHCP, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of 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. Defendant SHCP maintains a registered agent for service of process at c/o Choon Lim, 3700 Wilshire Blvd., #750, Los Angeles, CA 90010.

12. Defendant SHCP is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

13. 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 continues to conduct, business in the County of Alameda with respect to the Product.

14. 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 15. This Court has jurisdiction over Defendant because it is either a citizen of the
2 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 has otherwise purposefully availed itself of the California market.
5 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 16. On November 14, 2016, Plaintiff gave notice of alleged violation of Health and
9 Safety Code § 25249.6 (the "Notice") to SHCP concerning the exposure of California citizens to
10 DEHP contained in the Product without proper warning, subject to a private action to SHCP and
11 to the California Attorney General's office and the offices of the County District attorneys and
12 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
13 violations allegedly occurred.

14 17. 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 18. 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 SHCP under Proposition 65 to enforce the alleged violations which are
22 the subject of Plaintiff's notice of violation.

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

25 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

25. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal exposure. The bath pillow is expected to be in direct contact with bare human skin during its normal, expected use. If installed in a bathtub, dermal exposure of DEHP through the user's bare back, neck, and head is possible during normal, expected use. Additionally, dermal transfer to the user's bare hands can occur during installation and manipulation of the inflatable bath pillow. Should the product come into contact with water or humidity, as may be expected during installation in a bath, or the user contact the product with wet, bare skin, aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP permeation. The product can be expected to leach DEHP into the bath water over the lifetime of the product. This DEHP contaminated water can subsequently be absorbed through the skin. For instance, exposure to low-molecular weight phthalates was reported in urinary metabolites after male showering. Direct ingestion of DEHP will occur through mouthing of the valve during inflation of the bath pillow. Finally, some amount of exposure through ingestion can occur by handling the product with subsequent touching of the user's hand to mouth or through ingestion of DEHP contaminated bath water.

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

