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ENDORSED
FILED
ALAMEDA COUNTY
JAN 25 2017

CLERK OF THE SUPERIOR COURT
By Lanello Buffin, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 v.

14 BED BATH & BEYOND, INC.,

15 Defendant.

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Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

17 Plaintiff Ema Bell, by and through her attorneys, alleges the following cause of action in
18 the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff Ema Bell ("Plaintiff" or "Bell"), brings this representative action on
21 behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic
22 Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq* ("Proposition
23 65"), which reads, in relevant part, "[n]o person in the course of doing business shall knowingly
24 and intentionally expose any individual to a chemical known to the state to cause cancer or
25 reproductive toxicity without first giving clear and reasonable warning to such individual ...".
26 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 Diisononyl phthalate (DINP), a toxic chemical found in table pads
4 sold and/or distributed by defendant Bed Bath & Beyond, Inc. (“BB&B” or “Defendant”) in
5 California.

6 3. DINP is a harmful chemical known to the State of California to cause cancer. On
7 December 20, 2013, the State of California listed DINP as a chemical known to the State to
8 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
9 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
21 and/or offers for sale in California, without the required warning, table pads, including but not
22 limited to, Ultimate Luxury Deluxe Table Pads, UPC No. 0 75139 06524 4 (“Product” or
23 “Products”) that contain DINP.

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

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1 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

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

7 **PARTIES**

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

12 11. Defendant BB&B is an American chain of domestic merchandise retail stores in
13 that sells goods primarily for the bedroom and bathroom, kitchen and dining room. Through its
14 business, BB&B effectively manufactures, imports, distributes, sells, and/or offers the Product
15 for sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
16 distributes, sells, and/or offers the Product for sale or use in the State of California. Defendant
17 maintains a registered agent for service of process at c/o The Prentice-Hall Corporation System,
18 Inc., 2710 Gateway Oaks Dr., Ste. 150N, Sacramento, CA 95833.

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

21 **VENUE AND JURISDICTION**

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

26 14. This Court has jurisdiction over this action pursuant to California Constitution
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

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

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On November 10, 2016, Plaintiff gave notice of alleged violation of Health and
11 Safety Code § 25249.6 (the "Notice") to BB&B concerning the exposure of California citizens to
12 DINP contained in the Product without proper warning, subject to a private action to BB&B and
13 to the California Attorney General's office and the offices of the County District attorneys and
14 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
15 violations allegedly occurred.

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

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

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
26 Notice to BB&B, as required by law.

27 **FIRST CAUSE OF ACTION**

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

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

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

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

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

8 24. Plaintiff, based on her best information and belief, avers that at all relevant times
9 herein, and at least since October 9, 2016, continuing until the present, that BB&B has continued
10 to knowingly and intentionally expose California users and consumers of the Product to DINP
11 without providing required warnings under Proposition 65.

12 25. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the product. Consequently, the primary route of
14 exposure to these chemicals is through dermal exposure. The potential exists for dermal
15 exposure of DINP through direct contact with the user's bare hands when the table pad is fitted,
16 removed, or manipulated on the table. The product can be expected to emit gas phase DINP into
17 the air over the lifetime of the product. If the table pad is stored in a closed drawer with other
18 place settings DINP that leaches from the table pad may contaminate other articles contained
19 within the drawer that are subsequently handled or may come into contact with food or drink that
20 can be ingested during a meal. DINP may also contaminate articles that are directly placed on
21 the table pad for a place setting. Examples include, but are not limited to, use of DINP
22 contaminated silverware that is placed in the mouth, DINP contaminated dishware that
23 subsequently contaminates food that is ingested, DINP contaminated glassware that is placed
24 directly in the mouth, or DINP contaminated napkins that are used to clean the user's mouth.
25 Finally, while mouthing of the product does not seem likely, some amount of exposure through
26 ingestion can occur by touching the product with subsequent touching of the user's hand to
27 mouth.

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

4 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
6 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
7 sale and offering of the Product to consumers in California

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

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

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


14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
16 following relief:

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

24 Dated: November 22, 2016

BRODSKY & SMITH, LLC

25 By: 
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