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ALAMEDA COUNTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

13 TANG CHENG, HONGJIA LIAO,

14 Defendants.

Case No. **CG18891423**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

18 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the
19 following cause of action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest
28 of the citizens of the State of California to enforce the People's right to be informed of the health

1 hazards caused by exposure Di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical found in
2 wall decals/wallpaper decor sold and/or distributed by defendants Tang Cheng (“Cheng”) and
3 Hongjia Liao (“Liao”) (collectively, “Defendants”) in California.

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

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 or threaten to violate” the statute. Health & Safety
19 Code § 25249.7.

20 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,
21 and/or offer for sale in California, without the requisite exposure warning, Zoo Yoo wall
22 decals/wallpaper decor (the “Products”) that expose persons to DEHP.

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

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

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants 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. She brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Cheng, 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 Cheng maintains a registered agent for service of process at c/o Law Office of Michael Chen, 3333 S. Brea Canyon Road, Suite 213, Diamond Bar, CA 91765. Plaintiff alleges that defendant Cheng is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

12. Defendant Liao, 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 Liao maintains a registered agent for service of process at c/o Law Office of Michael Chen, 3333 S. Brea Canyon Road, Suite 213, Diamond Bar, CA 91765. Plaintiff alleges that defendant Liao 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 Defendants conducted, and continue to conduct, business in the County of Alameda with respect to the Product.

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

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

12 **SATISFACTION OF NOTICE REQUIREMENTS**

13 16. On March 28, 2017, Plaintiff gave notice of alleged violation of Health and Safety
14 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
15 DEHP contained in the Products without proper warning, subject to a private action to
16 Defendants and to the California Attorney General's office and the offices of the County District
17 attorneys and City Attorneys for each city with a population greater than 750,000 persons
18 wherein the herein violations allegedly occurred.

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

24 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
25 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
26 a cause of action against Defendants under Proposition 65 to enforce the alleged violations which
27 are the subject of Plaintiff's notice of violation.
28

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

FIRST CAUSE OF ACTION

(By Plaintiff against Defendants for the Violation of Proposition 65)

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

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

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

23. The Products do 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 27, 2016, continuing until the present, that Defendants have 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 this 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 potential exists for dermal exposure of DEHP through direct contact with the user's bare hands when the user applies, removes, or manipulates the wall paper. The black vinyl can be expected to release gas phase DEHP over the lifetime of the product. Gas phase DEHP can absorb onto soils or dust which potentially can be resuspended in the air and ingested. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by handling the product with subsequent touching of the user's hand to mouth.

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.

