

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

SEP 11 2017

By SUE PESKO

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

13 KAREN CALACIN,
14 Plaintiff,
15 v.
16 STAEDTLER-MARS LIMITED,
17 Defendant.

Case No.: RG17868408

AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF

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

18 Plaintiff Karen Calacin, by and through her 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 Karen Calacin ("Plaintiff" or "Calacin"), brings this representative action
22 on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic
23 Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq* ("Proposition
24 65"), which reads, in relevant part, "[n]o person in the course of doing business shall knowingly
25 and intentionally expose any individual to a chemical known to the state to cause cancer or
26 reproductive toxicity without first giving clear and reasonable warning to such individual ...".
27 Health & Safety Code § 25249.6.
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1 2. This amended complaint is a representative action brought by Plaintiff in the
2 public interest of the citizens of the State of California to enforce the People’s right to be
3 informed of the health hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP) and
4 Diisononyl phthalate (DINP), toxic chemicals found in Math Essentials Kits sold and/or
5 distributed by defendant Staedtler-Mars Limited. (“Staedtler” or “Defendant”) in California.

6 3. DEHP and DINP are harmful chemicals known to the State of California to cause
7 cancer and/or reproductive toxicity. On January 1, 1988, and on December 20, 2013,
8 respectively, the State of California listed DEHP and DINP as chemicals known to the State to
9 cause cancer and each chemical has come under the purview of Proposition 65 regulations since
10 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
11 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to
12 cause 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 produces, manufactures, distributes, imports, sells,
24 and/or offers for sale in California Staedtler Math Essentials Kits, UPC No. 0 31901 94476 6 (the
25 “Product” or “Products”) without the required Proposition 65 warning that the Products expose
26 users to 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,

1 manufacture, and/or distribution of the Products is a violation of Proposition 65 and subjects
2 Defendant to the 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 Staedtler is a writing instrument company and a manufacturer and
15 supplier of writing, artist, and engineering drawing instruments. Through its business, Staedtler
16 effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in
17 the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells,
18 and/or offers the Products for sale or use in the State of California.

19 12. Defendant Staedtler 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 March 30, 2017, Plaintiff gave notice of alleged violation of Health and Safety
11 Code § 25249.6 (the "Notice") to Staedtler concerning the exposure of California citizens to
12 DEHP and DINP contained in the Product without proper warning, subject to a private action to
13 Staedtler and to the California Attorney General's office and the offices of the County District
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons
15 wherein the herein 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 DEHP and DINP exposure, and that counsel believed there was meritorious and reasonable cause
20 for a 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 Staedtler under Proposition 65 to enforce the alleged violations which
24 are 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 Staedtler, 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 Products.

5 22. The Products contain DEHP and DINP, hazardous chemicals found on the
6 Proposition 65 list of chemicals known to be hazardous to human health.

7 23. The Products do 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 November 1, 2017 continuing until the present, that Staedtler has
10 continued to knowingly and intentionally expose California users and consumers of the Products
11 to DEHP and DINP 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 of DEHP and direct contact of DINP.
15 The potential exists for dermal exposure of DEHP and DINP through direct contact with the
16 user's bare hands when the user manipulates and touches the clear vinyl with bare hands. Items,
17 included but not limited to the manufacturer's items (protractor, fold-up ruler, 2 triangles,
18 automatic pencil, stick eraser, calculator, compass, spare lead), stored within the zippered pouch
19 will absorb DEHP and DINP directly through contact with the vinyl or through absorbing gas
20 phase DEHP and DINP that has leached out of the vinyl into the enclosed zippered pouch. When
21 these items are handled or used, dermal exposure to DEHP and DINP is possible. Finally, while
22 direct mouthing of the product does not seem likely, some amount of exposure through ingestion
23 can occur by inadvertently mouthing items stored within the zippered pouch or handling the
24 product with subsequent touching of the user's hand to mouth.

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

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