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ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

FEB 20 2018

Sherril M. Carter, Executive Officer/Clerk  
By: Marlon Gomez, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 **BC 694786**

15 CONSUMER ADVOCACY GROUP, INC.,  
16 in the public interest,

17 Plaintiff,

18 v.

19 BED BATH & BEYOND INC., a New York  
20 Corporation; BED BATH & BEYOND OF  
21 CALIFORNIA, LLC, a Delaware  
22 Corporation; LIBERTY PROCUREMENT  
23 CO. INC, a New York Corporation.;  
24 PACIFIC WORLD CORPORATION, a  
25 California Corporation; LEVINE  
26 LEICHTMAN CAPITAL PARTNERS, Inc,  
27 a California Corporation.; and DOES 1-10;

28 Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND  
INJUNCTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
Defendants, BED BATH & BEYOND INC., BED BATH & BEYOND OF CALIFORNIA,  
LLC, LIBERTY PROCUREMENT CO. INC., PACIFIC WORLD CORPORATION, LEVINE  
LEICHTMAN CAPITAL PARTNERS, INC. and DOES 1-10 as follows:

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant BED BATH & BEYOND INC. ("BED BATH & BEYOND") is a New York Corporation doing business in the State of California at all relevant times herein.
3. Defendant BED BATH & BEYOND OF CALIFORNIA, LLC; ("BED BATH & BEYOND OF CALIFORNIA"), is a Delaware LLC, doing business in the State of California at all relative times herein.
4. Defendant LIBERTY PROCUREMENT CO. INC; ("LIBERTY PROCUREMENT"), is a New York Corporation, doing business in the State of California at all relative times herein.
5. Defendant PACIFIC WORLD CORPORATION; ("PACIFIC WORLD"), is a California Corporation, doing business in the State of California at all relative times herein.
6. Defendant LEVINE LEICHTMAN CAPITAL PARTNERS, INC; ("LEVINE LEICHTMAN"), is a California Corporation, doing business in the State of California at all relative times herein.
7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
8. At all times mentioned herein, the term "Defendants" includes BED BATH & BEYOND, BED BATH & BEYOND OF CALIFORNIA, LIBERTY PROCUREMENT, PACIFIC WORLD, LEVINE LEICHTMAN, and DOES 1-10.

1 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
2 times mentioned herein have conducted business within the State of California.

3 10. Upon information and belief, at all times relevant to this action, each of the Defendants,  
4 including DOES 1-10, was an agent, servant, or employee of each of the other  
5 Defendants. In conducting the activities alleged in this Complaint, each of the  
6 Defendants was acting within the course and scope of this agency, service, or  
7 employment, and was acting with the consent, permission, and authorization of each of  
8 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
9 were ratified and approved by every other Defendant or their officers or managing agents.  
10 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
11 wrongful conduct of each of the other Defendants.

12 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
13 Defendants was a person doing business within the meaning of Health and Safety Code  
14 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
15 employees at all relevant times.

### 16 JURISDICTION

17 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
19 those given by statute to other trial courts. This Court has jurisdiction over this action  
20 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
21 violations of Proposition 65 in any Court of competent jurisdiction.

22 13. This Court has jurisdiction over Defendants named herein because Defendants either  
23 reside or are located in this State or are foreign corporations authorized to do business in  
24 California, are registered with the California Secretary of State, or who do sufficient  
25 business in California, have sufficient minimum contacts with California, or otherwise  
26 intentionally avail themselves of the markets within California through their manufacture,  
27 distribution, promotion, marketing, or sale of their products within California to render  
28

1 the exercise of jurisdiction by the California courts permissible under traditional notions  
2 of fair play and substantial justice.

- 3 14. Venue is proper in the County of Los Angeles because one or more of the instances of  
4 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
5 because Defendants conducted, and continue to conduct, business in the County of Los  
6 Angeles with respect to the consumer product that is the subject of this action.

7 **BACKGROUND AND PRELIMINARY FACTS**

- 8 15. In 1986, California voters approved an initiative to address growing concerns about  
9 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
10 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
11 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
12 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
13 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
14 from contamination, to allow consumers to make informed choices about the products  
15 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
16 fit.

- 17 16. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
18 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
19 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
20 chemicals and chemical families. Proposition 65 imposes warning requirements and  
21 other controls that apply to Proposition 65-listed chemicals.

- 22 17. All businesses with ten (10) or more employees that operate or sell products in California  
23 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
24 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
25 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
26 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
27 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

- 1 18. Proposition 65 provides that any person "violating or threatening to violate" the statute  
2 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
3 "Threaten to violate" means "to create a condition in which there is a substantial  
4 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
5 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
6 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 7 19. On January 1, 1988, the Governor of California added DEHP to the list of chemicals known  
8 to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list  
9 of chemicals known to the State to cause developmental male reproductive toxicity. Pursuant  
10 to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition  
11 of DEHP to the list of chemicals known to the State to cause reproductive toxicity, DEHP  
12 became fully subject to Proposition 65 warning requirements and discharge prohibitions.
- 13 20. Plaintiff identified certain practices of manufacturers and distributors of products bearing Di  
14 (2-ethylhexyl) phthalate ("DEHP") exposing, knowingly and intentionally, persons in  
15 California to said Proposition 65-listed chemical without first providing clear and reasonable  
16 warnings to the exposed persons prior to the time of exposure. Plaintiff later discerned that  
17 Defendants engaged in such practice.

18  
19 **SATISFACTION OF PRIOR NOTICE**

- 20 21. On or about May 16, 2017 Plaintiff gave notice of alleged violations of Health and Safety  
21 Code section 25249.6, concerning consumer products exposures subject to a private  
22 action to BED BATH & BEYOND, BED BATH & BEYOND OF CALIFORNIA,  
23 LIBERTY PROCUREMENT, PACIFIC WORLD, LEVINE LEICHTMAN and to the  
24 California Attorney General, County District Attorneys, and City Attorneys for each city  
25 containing a population of at least 750,000 people in whose jurisdictions the violations  
26 allegedly occurred, concerning the product Eye Kits with Polymer Components ("Eye  
27 Kits") containing DEHP.  
28

1 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to DEHP and the corporate structure of each of the Defendants.

4 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
6 Plaintiff who executed the certificate had consulted with at least one person with relevant  
7 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
8 subject Proposition 65-listed chemicals of this action. Based on that information, the  
9 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
10 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
11 to the Certificate of Merit served on the Attorney General the confidential factual  
12 information sufficient to establish the basis of the Certificate of Merit.

13 24. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
14 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
15 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

16 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notices of the alleged violation to BED BATH & BEYOND, BED BATH &  
18 BEYOND OF CALIFORNIA, LIBERTY PROCUREMENT, PACIFIC WORLD,  
19 LEVINE LEICHTMAN and the public prosecutors referenced in Paragraph 21.

20 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
21 any applicable district attorney or city attorney has commenced and is diligently  
22 prosecuting an action against the Defendants.

23  
24 **FIRST CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against BED BATH & BEYOND, BED**  
26 **BATH & BEYOND OF CALIFORNIA, LIBERTY PROCUREMENT, PACIFIC**  
27 **WORLD, LEVINE LEICHTMAN and DOES 1-10 for Violations of Proposition 65, The**  
28 **Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**  
**25249.5, et seq.))**

## EYE KITS

27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 26 of this complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of EYE KITS WITH POLYMER COMPONENTS, which includes but is not limited to "Harmon"; "Face Values"; "Professional Quality Eye Care"; "5-Piece Total Eye Kit"; "Distributed by Harmon Stores, Inc."; "www.facevalues.com"; "HM321"; "R392"; 07160314189 ("EYE KITS").

28. EYE KITS contain DEHP.

29. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in EYE KITS within Plaintiff's notice of alleged violations further discussed above at Paragraph 21.

30. Plaintiff's allegations regarding EYE KITS concern "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b). EYE KITS is a consumer product, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

31. Plaintiff is informed, believes, and thereon alleges that between May 16, 2014, and the present, each of the Defendants knowingly and intentionally exposed their employees, California consumers of EYE KITS, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold EYE KITS in California. Defendants know and intend that California consumers will use and consume EYE KITS, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

1 32. The principal routes of exposure with regard to EYE KITS are and were through trans-  
2 dermal absorption, ingestion, including hand to mouth pathways, and inhalation. Persons  
3 sustain exposures primarily by handling EYE KITS without wearing gloves or any other  
4 personal protective equipment, or by touching bare skin or mucous membranes with  
5 gloves after handling EYE KITS as well as through direct and indirect hand to mouth  
6 contact, hand to mucous membrane, or even breathing in particulate matter dispersed  
7 from EYE KITS.

8 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
9 Proposition 65 as to EYE KITS have been ongoing and continuous to the date of the  
10 signing of this complaint, as Defendants engaged and continue to engage in conduct  
11 which violates Health and Safety Code section 25249.6, including the manufacture,  
12 distribution, promotion, and sale of EYE KITS, so that a separate and distinct violation  
13 of Proposition 65 occurred each and every time a person was exposed to DEHP by EYE  
14 KITS as mentioned herein.

15 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
16 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
17 violations alleged herein will continue to occur into the future.

18 35. Based on the allegations herein, Defendants are liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DEHP from EYE KITS, pursuant to Health  
20 and Safety Code section 25249.7(b).

21 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
22 filing this Complaint.

### 23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each of the Defendants as follows:

- 25 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 26 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 27 3. Costs of suit;
- 28 4. Reasonable attorney fees and costs; and



1 5. Any further relief that the court may deem just and equitable.  
2

3 Dated: February 20, 2018

YEROUSHALMI & YEROUSHLAMI

4  
5 BY: 

6 Reuben Yeroushalmi  
7 Attorney for Plaintiff,  
8 Consumer Advocacy Group, Inc.  
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