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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN FRANCISCO**

9 CENTER FOR ADVANCED PUBLIC
AWARENESS, INC., in the public interest,

10 Plaintiff,

11 vs.

12 FOR LIFE PRODUCTS, LLC; and DOES 1
13 through 50, inclusive,

14 Defendants.
15 _____

Case Number:

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

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

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17 Plaintiff the Center for Advanced Public Awareness, Inc. ("CAPA"), in the public interest,
18 alleges as follows as to matters within their own knowledge, and on information and belief as to
19 all other matters:

20 **INTRODUCTION**

21 1. This action seeks to remedy the alleged failure of Defendants For Life Products, LLC
22 ("FLP" or "Defendant"), and DOES 1-50 (collectively "Defendants") to warn consumers in
23 California that they are being exposed to Diisononyl Phthalate ("DINP"), a substance known to
24 the State of California to cause cancer. Such exposures have occurred, and continue to occur,
25 through the manufacture, distribution, sale and consumer use of the reusable packaging
26 containing wood markers SKU# RJ6WM or UPC #678408053418 (the "Products"). California
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1 consumers are directly exposed to DINP through the touching of the reusable packaging. In
2 addition, DINP transferred to the hand is then ingested through hand to mouth contact.

3 2. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
4 Safety Code Section 25249.5 *et seq.* (hereinafter “Proposition 65”), it is unlawful for businesses
5 to knowingly and intentionally expose individuals in California to chemicals known to the State
6 to cause cancer and/or birth defects or other reproductive harm above the safe harbor levels,
7 which include the No Significant Risk Levels (“NSRLs”) and/or Maximum Allowable Dose
8 Levels (“MADLs”) without providing “clear and reasonable” warnings to individuals prior to
9 their exposure.

10 3. Despite the fact that FLP’s Products allegedly expose consumers to levels of DINP above
11 the listed NSRLs, it failed to provide any warnings whatsoever about the carcinogenic hazards
12 associated with DINP exposure. Moreover, FLP’s continued manufacture, packaging,
13 distribution, marketing, and/or sales of the Products without the required health hazard warnings,
14 causes consumers to be involuntarily, unknowingly and unwittingly exposed to levels of DINP
15 that violate Proposition 65. Thus, Defendant’s conduct subjects them to civil penalties and
16 injunctive relief.

17 **JURISDICTION AND VENUE**

18 4. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code §
19 25249.7, which allows enforcement in any court of competent jurisdiction. The California
20 Superior Court has jurisdiction over this action pursuant to California Constitution Article VI,
21 Section 10, which grants the Superior Court “original jurisdiction in all cases except those given
22 by statute to other trial courts.” The statute under which this is brought does not specify any other
23 court with jurisdiction.

24 5. This Court has jurisdiction over Defendants because they are business entities that do
25 sufficient business, have sufficient minimum contacts or otherwise intentionally avail themselves
26 of the California market through the sale, marketing, or use of the Products in the California
27 market and/or by having such other contact with California so as to render the exercise of
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1 jurisdiction over them by the California courts consistent with traditional notions of fair play and
2 substantial justice.

3 6. Venue is proper in this Court because, upon information and belief, one or more of the
4 violations arise in San Francisco County.

5 **THE PARTIES**

6 7. CAPA is a non-profit corporation organized under the laws of California acting in the
7 interest of the general public seeking to further, among other causes, the protection of the
8 environment, awareness of dangerous chemicals in consumer products, and corporate
9 accountability. CAPA is a “person” within the meaning of Cal. Health & Safety Code §
10 25249.11(a) and brings this enforcement action in the public interest pursuant to Cal. Health &
11 Safety Code § 25249.7(d).

12 8. CAPA is informed and believes, and thereon alleges, that Defendant FLP is a Florida
13 entity, which has shipped numerous products for sale into the state of California. FLP is a “person
14 in the course of doing business” within the meaning of Cal. Health & Safety Code § 25249.11(b).

15 9. CAPA is unaware of the true names or capacities of the Defendants sued herein under the
16 fictitious names DOES 1-50, but prays for leave to amend and serve such fictitiously named
17 Defendants pursuant to California Code of Civil Procedure § 474, once their names and capacities
18 become known.

19 10. CAPA is informed and believes, and thereon alleges, that each and all of the acts and
20 omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-50,
21 each acting as the agent for the other, with legal authority to act on the other’s behalf. Upon
22 information and belief, the acts of Defendants were in accordance with, and represent the official
23 policies of Defendants.

24 11. At all times herein mentioned, upon information and belief, the Defendants, and each of
25 them, ratified each and every act or omission complained of herein. At all times herein
26 mentioned, upon information and belief, Defendants, and each of them, aided and abetted the acts
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1 and omissions of each and all the other Defendants proximately causing the damages herein
2 alleged.

3 12. CAPA is informed and believes, and thereon alleges, that each of Defendants are in some
4 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
5 and transactions alleged herein.

6 **STATUTORY AND REGULATORY BACKGROUND**

7 13. The People of the State of California declared in Proposition 65 their right "[t]o be
8 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
9 harm." (Section 1(b) of Initiative Measure, Proposition 65).

10 14. To effectuate this goal, Proposition 65 requires that individuals be provided with a "clear
11 and reasonable warning" before being exposed to substances listed by the State of California as
12 causing cancer or reproductive toxicity. Cal. Health and Safety Code §25249.6 states, in pertinent
13 part:

14 No person in the course of doing business shall knowingly and
15 intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving
clear and reasonable warning to such individual....

17 15. A product exposure to a chemical is one that "results from a person's acquisition,
18 purchase, storage, consumption, or other reasonably foreseeable use of a product" 27 C.C.R.
§25600(h).

19 16. Proposition 65 provides that any "person who violates or threatens to violate" the statute
20 may be enjoined in a court of competent jurisdiction. Cal. Health & Safety Code §25249.7. The
21 phrase "threaten to violate" is defined to mean creating "a condition in which there is a substantial
22 probability that a violation will occur" Cal. Health & Safety Code §25249.11(e). Violators are
23 liable for civil penalties of up to \$2,500 per day for each violation of the Act. Cal. Health &
24 Safety Code §25249.7.

25 17. On December 20, 2013, the State of California officially listed DINP as a chemical known
26 to cause cancer. On December 20, 2014, on year after it was listed as a chemical known to cause
27 cancer, DINP became subject to the clear and reasonable warning requirement regarding cancer
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1 under Proposition 65. 27 C.C.R. §27001(c); Cal. Health & Safety Code §25249.10(b). Due to the
2 toxicity of DINP, the California Office of Environmental Health Hazard Assessment (“OEHHA”)
3 set the NSRL for exposure to DINP at 146 micrograms per day.

4 **STATEMENT OF RELEVANT FACTS**

5 18. CAPA purchased the Product on or around August 8, 2017.

6 19. To test the Product for phthalates, CAPA engaged a well-respected and accredited testing
7 laboratory to determine the amount of DINP contained in the product pursuant to testing methods
8 adopted by the Federal Consumer Products Safety Commission. The testing revealed the that
9 Product had levels of DINP that would result in exposure of DINP to consumers far higher than
10 the limit proscribed by the NSRL.

11 20. FLP’s Products contain sufficient quantities of DINP such that individuals who handle the
12 Products are exposed to significant amounts of DINP through the average and intended use of the
13 Products. For example, ordinary consumers absorb DINP through the skin when they touch, use,
14 or handle the Products. Ordinary consumers also directly ingest DINP when then put the Products
15 in their mouth during normal use. Consumers also ingest DINP via hand to mouth contact after
16 they touch, use, or handle the Products and then touch their mouths or other objects that are then
17 placed in their mouths.

18 21. FLP knows and intends that consumers will use the products in the manner stated above,
19 and that they will be exposed to chemicals such as DINP that exist in the Products.

20 22. At all times relevant to this action, Defendant, therefore, has knowingly and intentionally
21 exposed the users, consumers and/or handlers of the Products to DINP without first giving a clear
22 and reasonable warning to such individuals.

23 23. CAPA is informed and believes, and thereon alleges, that Defendants have, since August
24 2017, and continuing through the present, exposed consumers to DINP without providing clear
25 and reasonable warnings regarding the cancer hazards of DINP.

1 24. As a proximate result of the acts by Defendants, as persons in the course of doing business
2 within the meaning of Health & Safety Code §25249.11, they have subjected consumers to
3 violative exposures through the normal and foreseeable use of the Products.

4 25. Any person acting in the public interest has standing to enforce violations of Proposition
5 65 provided that such person has supplied the requisite public enforcers with a valid 60-Day
6 Notice of Violation and such public enforcers are not diligently prosecuting the action with such
7 time. Cal. Health & Safety Code §25249.7(d).

8 26. On September 20, 2017, CAPA provided a “60-Day Notice of Violation of California
9 Health & Safety Code Section 25249.5 et seq.” (“Notice”) to the California Attorney General, the
10 District Attorneys of every county in California, and the City Attorneys of every California city
11 with a population greater than \$750,000.00. Defendant was also provided a copy of the Notice.
12 The Notice included, *inter alia*, the following information: the name, address, and telephone
13 number of the noticing individual; the name of the alleged violator; the statute violated; the
14 approximate time period during which violations occurred; and descriptions of the violations
15 including the chemicals involved, the routes of toxic exposure, and the specific product or type of
16 product causing the violations. The Notice package to Defendant also included the most recent
17 version of Appendix A, the Final Adopted Regulatory Text for Title 27 of the California Code of
18 Regulations, Section 5903 as amended. In compliance with California Health & Safety Code §
19 25249.7(d) and 11 C.C.R. §3102, CAPA, Plaintiff provided factual information – on a confidential
20 basis – to the Attorney General sufficient to satisfy basis for the Certificate of Merit, including the
21 testing performed by CAPA, and/or its litigation consultants, and the facts, studies, or other data
22 supporting the Certificate.

23 27. After expiration of the sixty (60) day notice period, the appropriate public enforcement
24 agencies have failed to commence and diligently prosecute a cause of action under California
25 Health & Safety Code §25249.5 *et seq.* against Defendant based on the allegations herein.

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1 28. CAPA has engaged in good faith efforts to resolve the claims alleged herein prior to filing
2 this complaint, and the parties have reached an agreement in principal to seek a stipulated consent
3 judgment.

4 **FIRST CAUSE OF ACTION**

5 **(Injunctive Relief Pursuant to Cal. Health & Safety Code §25249.5 *et seq*)**

6 29. CAPA incorporates by reference and re-alleges as if fully stated herein the material
7 allegations set out in paragraphs 1 through 28 inclusive.

8 30. By committing the acts alleged in this Complaint, Defendant at all times relevant to this
9 action, and continuing through the present, has violated California Health & Safety Code
10 §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals in
11 California to chemicals known to the State of California to cause cancer or reproductive toxicity
12 without first giving clear and reasonable warnings to such persons who use, consume or handle the
13 Products containing DINP, pursuant to California Health & Safety Code §§25249.6 and
14 25249.11(f).

15 31. By the above-described acts, Defendant has violated California Health & Safety Code
16 §25249.6 and is therefore subject to preliminary and permanent injunctions ordering Defendant to
17 stop violating Proposition 65, to provide warnings to all present and future customers, and to
18 provide warnings to Defendant's past customers who purchased or used the Products without
19 receiving a clear and reasonable warning.

20 32. An action for injunctive relief under Proposition 65 is specifically authorized by California
21 Health & Safety Code §25249.7(a).

22 33. Defendant's actions in selling the Products without clear and reasonable warnings will
23 irreparably harm the citizens of the State of California, for which harm they have no plain, speedy,
24 or adequate remedy at law.

25 34. In the absence of preliminary and then permanent injunctive relief, Defendant will
26 continue to create a substantial risk of irreparable injury by continuing to cause consumers to be
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1 involuntarily, unknowingly and unwittingly exposed to the DINP through the use, consumption
2 and/or handling of the Products.

3 **SECOND CAUSE OF ACTION**

4 **(Civil Penalties Pursuant to Cal. Health & Safety Code §25249.5 *et seq*)**

5 35. CAPA incorporates by reference and re-alleges as if fully stated herein the material
6 allegations set out in paragraphs 1 through 34, inclusive.

7 36. By committing the acts alleged in this Complaint, Defendant at all times relevant to this
8 action, and continuing through the present, has violated California Health & Safety Code
9 §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals in
10 California to chemicals known to the State of California to cause cancer or reproductive toxicity
11 without first giving clear and reasonable warnings to such persons who use, consume or handle the
12 Products containing DINP, pursuant to California Health & Safety Code §§25249.6 and
13 25249.11(f).

14 37. By engaging in the above-described acts, Defendant is liable, pursuant to California Health
15 & Safety Code §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each
16 unlawful exposure to DINP from the Products in an amount in excess of \$1 million.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, CAPA prays for relief and judgment against Defendant follows:

19 **As to the Causes of Action**

20 1. A preliminary and permanent injunction, pursuant to California Health &
21 Safety Code Code §25249.7(a), enjoining Defendant, its agents, employees, assigns and all
22 persons acting in concert or participating with Defendant, from manufacturing, distributing,
23 marketing or selling the Products in California without either reformulating the Products or
24 providing a clear and reasonable warning, within the meaning of Proposition 65, that the users
25 and/or handlers of the Products are exposed to DINP;

26 2. An Order pursuant to California Health & Safety Code §25249.7(a)
27 compelling Defendant to use best methods to identify and locate each individual who purchased
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1 the Products during the statutory period, and to provide a warning to such person that the use of
2 the Products will expose them to chemicals known to cause cancer;


3 3. An assessment of civil penalties pursuant to California Health & Safety
4 Code §25249.7(b) against Defendant in the amount of \$2,500 per day for each violation of
5 Proposition 65, in an amount to be determined at trial;

6 4. For an award to CAPA of its reasonable attorneys' fees and costs of suit
7 incurred herein; and

8 5. For such equitable or other relief as the Court may deem just and proper.

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10 Dated: May 29, 2018

KAWAHITO LAW GROUP APC

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13 By: 
14 James Kawahito
15 Attorneys for Plaintiff
16 CENTER FOR ADVANCED PUBLIC
17 AWARENESS, INC.
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