

1 JAMES KAWAHITO (SBN 234851)  
2 KAWAHITO LAW GROUP APC  
3 222 N. Sepulveda Blvd. Suite 2222  
4 El Segundo, CA 90245  
5 Telephone: (310) 746-5300  
6 Facsimile: (310) 593-2520  
7 Email: jkawahito@kawahitolaw.com

ENDORSED  
FILED  
San Francisco County Superior Court

APR 06 2018

CLERK OF THE COURT  
BY: KALENE APOLONIO  
Deputy Clerk

Attorneys for Plaintiff the Center for Advanced Public Awareness, Inc.

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

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

12 Plaintiff,

13 vs.

14 BEST BRANDS CONSUMER PRODUCTS,  
15 INC., a New York Corporation; and DOES 1  
16 through 50, inclusive,

17 Defendants.

Case Number **CGC-18-565587**

**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.)**

BY FAX  
ONE LEGAL LLC

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

21 **INTRODUCTION**

22 1. This action seeks to remedy the alleged failure of Defendants Best Brands Consumer  
23 Products, Inc. ("Best Brands") and DOES 1-50 (hereinafter individually referred to as  
24 "Defendant" and collectively as "Defendants") to warn consumers in California that they are  
25 being exposed to Di-(2-ethylhexyl) phthalate ("DEHP"), a substance known to the State of  
26 California to cause cancer and developmental/reproductive toxicity. Plaintiff alleges such  
27 exposures have occurred through the manufacture, distribution, sale and consumer use of  
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1 Defendants' Smart Travel Container Sets, SKU# 004288741424, which are imported, sold and/or  
2 distributed for sale in California by Best Brands (the "Products"). California consumers are  
3 directly exposed to DEHP through the touching of the components of the Products. In addition,  
4 DEHP transferred to the hand is then ingested through hand to mouth contact.

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

12 3. Despite the fact that Defendants' Products allegedly expose consumers to levels of DEHP  
13 above the listed NSRLs and MADLs, Plaintiff contends that Defendants failed to provide any  
14 warnings whatsoever about the carcinogenic hazards associated with DEHP exposure.  
15 Moreover, Defendants' manufacture, packaging, distribution, marketing, and/or sales of the  
16 Products without the required health hazard warnings, causes consumers to be involuntarily,  
17 unknowingly and unwittingly exposed to levels of DEHP that violate Proposition 65. Thus,  
18 Defendants' conduct subjects them to civil penalties and injunctive relief.

### 19 JURISDICTION AND VENUE

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

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

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

7 **THE PARTIES**

8 7. CAPA is a non-profit corporation organized under the laws of California acting in the  
9 interest of the general public seeking to further, among other causes, the protection of the  
10 environment, awareness of dangerous chemicals in consumer products, and corporate  
11 accountability. CAPA is a “person” within the meaning of Cal. Health & Safety Code §  
12 25249.11(a) and brings this enforcement action in the public interest pursuant to Cal. Health &  
13 Safety Code § 25249.7(d).

14 8. CAPA is informed and believes, and thereon alleges, that defendant Best Brands is a New  
15 York Corporation who supplies consumer products to various retail stores in the state of  
16 California. Best Brands is a “person in the course of doing business” within the meaning of Cal.  
17 Health & Safety Code § 25249.11(b).

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

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

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

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

9 **STATUTORY AND REGULATORY BACKGROUND**

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

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

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

21 15. A product exposure to a chemical is one that "results from a person's acquisition,  
22 purchase, storage, consumption, or other reasonably foreseeable use of a product . . . ." 27 C.C.R.  
23 §25600(h).

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

1 17. On October 24, 2003, the State of California officially listed DEHP as a chemical known  
2 to cause cancer. On October 24, 2004, one year after it was listed as a chemical known to cause  
3 cancer and reproductive/developmental toxicity, DINP became subject to the clear and reasonable  
4 warning requirement regarding under Proposition 65. 27 C.C.R. §27001(c); Cal. Health & Safety  
5 Code §25249.10(b). Due to the toxicity of DEHP, the California Office of Environmental Health  
6 Hazard Assessment (“OEHHA”) set the NSRL for exposure to DEHP at 310 micrograms per day  
7 and a MADL of 410 micrograms per day for oral ingestion.

8 **STATEMENT OF RELEVANT FACTS**

9 18. CAPA purchased the Product in August 2017.

10 19. To test Defendants’ Products for phthalates, CAPA engaged a well-respected and  
11 accredited testing laboratory to determine the amount of DEHP contained in the Products pursuant  
12 to testing methods adopted by the Federal Consumer Products Safety Commission. The testing  
13 revealed that the Product had levels of DEHP that Plaintiff believes would result in exposure of  
14 DEHP to consumers far higher than the limit proscribed by the NSRL and MADL.

15 20. Plaintiff alleges that Defendants’ Products contain sufficient quantities of DEHP such that  
16 individuals who handle the Products are exposed to significant amounts of DEHP through the  
17 average and intended use of the Products. For example, ordinary consumers absorb DEHP  
18 through the skin when they touch, use, and/or handle the Products. Ordinary consumers also  
19 ingest DEHP via hand to mouth contact after they touch, use, or handle the Products and then  
20 touch their mouths or other objects that are then placed in their mouths.

21 21. Plaintiff alleges that Defendants know and intend that consumers will use the products in  
22 manner stated above, and that they will be exposed to any chemicals such as DEHP that exist in  
23 the Products.

24 22. At all times relevant to this action, Defendants, therefore, have knowingly and  
25 intentionally exposed the users, consumers and/or handlers of the Products to DEHP without first  
26 giving a clear and reasonable warning to such individuals.

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1 23. CAPA is informed and believes, and thereon alleges, that Defendants have, since August  
2 2017, and continuing through the present, exposed consumers to DEHP without providing clear  
3 and reasonable warnings regarding the cancer hazards of DEHP.

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

7 25. Any person acting in the public interest has standing to enforce violations of Proposition  
8 65 provided that such person has supplied the requisite public enforcers with a valid 60-Day  
9 Notice of Violation and such public enforcers are not diligently prosecuting the action with such  
10 time. Cal. Health & Safety Code §25249.7(d).

11 26. On November 6, 2017, CAPA provided a “60-Day Notice of Violations of California  
12 Health & Safety Code Section 25249.5 et seq.” (“Notice”) to the California Attorney General, the  
13 District Attorneys of every county in California, and the City Attorneys of every California city  
14 with a population greater than 750,000. Defendants were also provided a copy of the Notice. The  
15 Notice included, *inter alia*, the following information: the name, address, and telephone number of  
16 the noticing individual; the name of the alleged violator; the statute violated; the approximate time  
17 period during which violations occurred; and descriptions of the violations including the  
18 chemicals involved, the routes of toxic exposure, and the specific product or type of product  
19 causing the violations. The Notice package to Defendants also included the most recent version of  
20 Appendix A, the Final Adopted Regulatory Text for Title 27 of the California Code of  
21 Regulations, Section 5903 as amended. In compliance with California Health & Safety Code §  
22 25249.7(d) and 11 C.C.R. §3102, CAPA provided factual information – on a confidential basis –  
23 to the Attorney General sufficient to satisfy basis for the Certificate of Merit, including the testing  
24 performed by CAPA, and/or its litigation consultants, and the facts, studies, or other data  
25 supporting the Certificate.

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

4 28. CAPA has engaged in good faith efforts to resolve the claims alleged herein prior to filing  
5 this complaint, and as a result, the parties have reached a consent judgment that they intend to file  
6 with the Court to resolve the claims in this lawsuit.

7 **FIRST CAUSE OF ACTION**

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

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

11 30. By committing the acts alleged in this Complaint, Plaintiff alleges that Defendants at all  
12 times relevant to this action, and continuing through the present, have violated California Health  
13 & Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally  
14 exposing individuals in California to chemicals known to the State of California to cause cancer or  
15 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,  
16 consume or handle the Products containing DEHP, pursuant to California Health & Safety Code  
17 §§25249.6 and 25249.11(f).

18 31. By the above-described acts, Plaintiff alleges Defendants have violated California Health  
19 & Safety Code §25249.6 and are therefore subject to preliminary and permanent injunctions  
20 ordering Defendants to stop violating Proposition 65, to provide warnings to all present and future  
21 customers, and to provide warnings to Defendants' past customers who purchased or used the  
22 Products without receiving a clear and reasonable warning.

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

25 33. Plaintiff alleges that Defendants actions in selling the Products without clear and  
26 reasonable warnings will irreparably harm the citizens of the State of California, for which harm  
27 they have no plain, speedy, or adequate remedy at law.

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1 34. In the absence of preliminary and then permanent injunctive relief, Plaintiff alleges that  
2 Defendants will continue to create a substantial risk of irreparable injury by continuing to cause  
3 consumers to be involuntarily, unknowingly and unwittingly exposed to DEHP through the use,  
4 consumption and/or handling of the Products.

5 **SECOND CAUSE OF ACTION**

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

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

9 36. By committing the acts alleged in this Complaint, Plaintiff alleges Defendants at all times  
10 relevant to this action, and continuing through the present, have violated California Health &  
11 Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
12 individuals in California to chemicals known to the State of California to cause cancer or  
13 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,  
14 consume or handle the Products containing DEHP, pursuant to California Health & Safety Code  
15 §§25249.6 and 25249.11(f).

16 37. By engaging in the above-described acts, Plaintiff alleges Defendants are liable, pursuant  
17 to California Health & Safety Code §25249.7(b), for a civil penalty of up to \$2,500 per day per  
18 violation for each unlawful exposure to DEHP from the Products in an amount in excess of \$1  
19 million.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, CAPA prays for relief and judgment against Defendants, and each of  
22 them, as follows:

23 **As to the Causes of Action**

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

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


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

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

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

13  
14 Dated: April 5, 2018

KAWAHITO LAW GROUP APC

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17 By:   
18 James Kawahito  
19 Attorneys for Plaintiff  
20 CENTER FOR ADVANCED PUBLIC  
21 AWARENESS  
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