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ENDORSED
FILED
ALAMEDA COUNTY

JAN 29 2018

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 KAREN CALACIN,

13 Plaintiff,

14 vs.

15 FRIDABABY, LLC,

16 Defendant.

Case No.: **RG18890996**¹⁰⁰

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

17 **BY FAX**

18 Plaintiff Karen Calacin ("Plaintiff"), by and through her attorneys, alleges the following
19 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 Fridababy Bitty Bundle of Joy Bags sold and/or distributed by defendant Fridababy, LLC
3 (“Fridababy” or “Defendant”) 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 reproductive toxicity.

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 Defendant manufactures, distributes and/or offers for sale in
21 California, without the requisite exposure warning, Fridababy Bitty Bundle of Joy Bags (the
22 “Products”) that expose persons to DEHP.

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

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

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
2 Defendant to provide purchasers or users of the Products with required warnings related to the
3 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
4 Code § 25249.7(a).

5 **PARTIES**

6 10. Plaintiff is a citizen of the State of California acting in the interest of the general
7 public to promote awareness of exposures to toxic chemicals in products sold in California and
8 to improve human health by reducing hazardous substances contained in such items. He brings
9 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

10 11. Defendant Fridababy, through its business, effectively manufactures, imports,
11 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
12 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale
13 or use in the State of California.

14 12. Plaintiff alleges that defendant Fridababy is a “person” in the course of doing
15 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

16 **VENUE AND JURISDICTION**

17 13. Venue is proper in the County of Alameda because one or more of the instances
18 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
19 conducted, and continues to conduct, business in the County of Alameda with respect to the
20 Products.

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

26 15. This Court has jurisdiction over Defendant because Defendant is either a citizen
27 of the State of California, has sufficient minimum contacts with the State of California, is
28 registered with the California Secretary of State as foreign corporations authorized to do business

1 in the State of California, and/or has otherwise purposefully availed itself of the California
2 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On November 9, 2017, Plaintiff gave notice of alleged violation of Health and
6 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California
7 citizens to DEHP contained in the Products without proper warning, subject to a private action to
8 Defendant and to the California Attorney General's office and the offices of the County District
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons
10 wherein the herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

23 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

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

26 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
27 and/or retailer of the Product.

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

3 23. The Product does not comply with the Proposition 65 warning requirements.

4 24. Plaintiff, based on her best information and belief, avers that at all relevant times
5 herein, and at least since October 23, 2017, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to DEHP without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of this notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is through dermal absorption. The product can be expected to emit
11 gas phase DEHP into the air over and accumulate DEHP at the surface over the lifetime of the
12 product. Users may potentially be exposed to DEHP by dermal absorption through direct skin
13 contact with the clear plastic case during routine use when the case is manipulated with bare
14 hands. Concentrations of gas phase DEHP can be expected to build within the zippered,
15 enclosed interior of the kit. This gas phase DEHP can potentially be absorbed to the surface of
16 the interior contents which includes 1 NoseFrida the SnotSucker (nasal aspirator), 20 NoseFrida
17 Hygiene Filters, 10 Windi the GasPasser, a NailFrida SnipperClipper set with clippers and a
18 newborn file, and 1 Fridet the Mom Washer (peri bottle). When handled, these items can
19 provide an indirect source of dermal transfer of DEHP to the user's hands when the contents are
20 grasped with bare hands. Contaminated items such as the nose aspirator filters can be placed
21 inside the infant's nasal cavity where nasal absorption of DEHP can occur. Rectal absorption of
22 DEHP in infants can occur when a contaminated Windi the Gas Passer is inserted into the
23 infant's rectum. Should the user manipulate the clear plastic or contaminated inner contents with
24 wet hands, or the clear plastic or its contents become wet, aqueous DEHP skin permeation rates
25 are faster than neat DEHP permeation. If the Fridababy Bitty Bundle of Joy is stored or
26 transported in a carrier, DEHP that leaches from the item may contaminate other articles
27 contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested
28 by the user. Finally, while mouthing of the product does not seem likely, some amount of

1 exposure through ingestion can occur by touching the product or contaminated inner items with
2 subsequent touching of the user's hand to mouth.

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

6 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
7 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
8 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
9 and offering of the Products to consumers in California

10 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
11 Complaint.

12 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
13 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

14 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
15 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
18 following relief:

- 19 A. That the court assess civil penalties against Defendant in the amount of
20 \$2,500 per day for each violation in accordance with Health and Safety
21 Code § 25249.7(b);
- 22 B. That the court preliminarily and permanently enjoin Defendant mandating
23 Proposition 65 compliant warnings on the Product;
- 24 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 25 D. That the court grant any further relief as may be just and proper.

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27 Dated: January 26, 2018

BRODSKY & SMITH, LLC

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