

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 25 2018

CLERK OF THE SUPERIOR COURT  
By CURTIVALL GANTER

Deputy

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*

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

12 ESTATE OF KAREN CHARLENE  
13 CALACIN,

14 Plaintiff,

15 vs.

16 FRIDABABY, LLC,

17 Defendant.

Case No.: RG18890996

Dept.: 20

Judge: Paul D. Herbert

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

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

RECEIVED  
COURT CLERK  
JUL 25 2018

18 Plaintiff, the Estate of Karen Charlene Calacin (“Plaintiff”), by and through its attorneys,  
19 alleges the following cause of action in the public interest of the citizens of the State of  
20 California.

21 **BACKGROUND OF THE CASE**

22 1. Plaintiff brings this representative action on behalf of all California citizens to  
23 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
24 at the Health and Safety Code § 25249.5 *et seq* (“Proposition 65”), which reads, in relevant part,  
25 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
26 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
27 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

1           2.       This first 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 Di(2-ethylhexyl) phthalate (DEHP), a toxic  
4 chemical found in Fridababy Bitty Bundle of Joy Bags sold and/or distributed by defendant  
5 Fridababy, LLC (“Fridababy” or “Defendant”) in California.

6           3.       DEHP is a harmful chemical known to the State of California to cause cancer and  
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
8 known to the State to cause cancer and it has come under the purview of Proposition 65  
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
11 known to cause reproductive toxicity.

12           4.       Proposition 65 requires all businesses with ten (10) or more employees that  
13 operate within California or sell products therein to comply with Proposition 65 regulations.  
14 Included in such regulations is the requirement that businesses must label any product containing  
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and  
16 intentionally” exposing any person to it.

17           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
20 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety  
21 Code § 25249.7.

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

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



1           15.     This Court has jurisdiction over Defendant because Defendant is either a citizen  
2 of the State of California, has sufficient minimum contacts with the State of California, is  
3 registered with the California Secretary of State as foreign corporations authorized to do business  
4 in the State of California, and/or has otherwise purposefully availed itself of the California  
5 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
6 consistent and permissible with traditional notions of fair play and substantial justice.

7   **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

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

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

25   **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

10          25.     The exposures that are the subject of this notice result from the purchase,  
11 acquisition, handling and recommended use of the product. Consequently, the primary route of  
12 exposure to these chemicals is through dermal absorption. The product can be expected to emit  
13 gas phase DEHP into the air over and accumulate DEHP at the surface over the lifetime of the  
14 product. Users may potentially be exposed to DEHP by dermal absorption through direct skin  
15 contact with the clear plastic case during routine use when the case is manipulated with bare  
16 hands. Concentrations of gas phase DEHP can be expected to build within the zippered,  
17 enclosed interior of the kit. This gas phase DEHP can potentially be absorbed to the surface of  
18 the interior contents which includes 1 NoseFrida the SnotSucker (nasal aspirator), 20 NoseFrida  
19 Hygiene Filters, 10 Windi the GasPasser, a NailFrida SnipperClipper set with clippers and a  
20 newborn file, and 1 Fridet the Mom Washer (peri bottle). When handled, these items can  
21 provide an indirect source of dermal transfer of DEHP to the user's hands when the contents are  
22 grasped with bare hands. Contaminated items such as the nose aspirator filters can be placed  
23 inside the infant's nasal cavity where nasal absorption of DEHP can occur. Rectal absorption of  
24 DEHP in infants can occur when a contaminated Windi the Gas Passer is inserted into the  
25 infant's rectum. Should the user manipulate the clear plastic or contaminated inner contents with  
26 wet hands, or the clear plastic or its contents become wet, aqueous DEHP skin permeation rates  
27 are faster than neat DEHP permeation. If the Fridababy Bitty Bundle of Joy is stored or  
28 transported in a carrier, DEHP that leaches from the item may contaminate other articles

1 contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested  
2 by the user. Finally, while mouthing of the product does not seem likely, some amount of  
3 exposure through ingestion can occur by touching the product or contaminated inner items with  
4 subsequent touching of the user's hand to mouth.

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

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

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

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

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
20 following relief:

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

28

1 Dated: July 25, 2018

BRODSKY & SMITH, LLC

2 By:  \_\_\_\_\_

3 Evan J. Smith (SBN242352)  
4 Ryan P. Cardona (SBN302113)  
5 9595 Wilshire Boulevard, Suite 900  
6 Beverly Hills, CA 90212  
7 Telephone: (877) 534-2590  
8 Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28