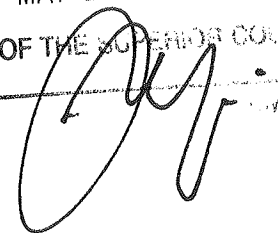


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**ENDORSED  
FILED  
ALAMEDA COUNTY**

MAY 11 2018

CLERK OF THE SUPERIOR COURT  
By 

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,  
12 Plaintiff,

13 v.

14 KIDSBOOKS, LLC, BURLINGTON  
15 COAT FACTORY WAREHOUSE CORP.,  
16 Defendants.

Case No.: **RG18904514**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

17 Plaintiff Anthony Ferreiro (“Plaintiff” or “Ferreiro”), by and through his attorneys,  
18 alleges the following cause of action in the public interest of the citizens of the State of  
19 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  
28

1           2.       This complaint is a representative action brought by Plaintiff in the public interest  
2 of the citizens of the State of California to enforce the People’s right to be informed of the health  
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
4 Finding Dory Activity Mats manufactured, distributed, offered for sale and/or sold by defendants  
5 Kidsbooks, LLC (“Kidsbooks”) and Burlington Coat Factory Warehouse Corporation  
6 (“Burlington Coat Factory”) (collectively, “Defendants”) in California.

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

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

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

23           6.       Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in  
24 California, without the required exposure warning, Finding Dory Activity Mats (“Product” or  
25 “Products”) that contain DEHP.

26           7.       Defendants’ failure to warn consumers and other individuals in California of the  
27 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,  
28

1 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the  
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of  
4 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
6 Defendants to provide purchasers or users of the Product with the required warnings related to  
7 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety  
8 Code § 25249.7(a).

9 **PARTIES**

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

14 11. Defendant Kidsbooks, through its business, effectively manufactures, imports,  
15 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies  
16 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale  
17 or use in the State of California. Plaintiff alleges that defendant Kidsbooks is a “person” in the  
18 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
19 25249.11.

20 12. Defendant Burlington Coat Factory, through its business, effectively  
21 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of  
22 California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or  
23 offers the Product for sale or use in the State of California. Plaintiff alleges that defendant  
24 Burlington Coat Factory is a “person” in the course of doing business within the meaning of  
25 Health & Safety Code sections 25249.6 and 25249.11.

1 **VENUE AND JURISDICTION**

2 13. Venue is proper in the County of Alameda because one or more of the instances  
3 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants  
4 conduct, and continue to conduct, business in the County of Alameda with respect to the Product.

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

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

16 **SATISFACTION OF NOTICE REQUIREMENTS**

17 16. On November 30, 2017, Plaintiff gave notice of alleged violation of Health and  
18 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California  
19 citizens to DEHP contained in the Product without proper warning, subject to a private action to  
20 Defendants and to the California Attorney General's office and the offices of the County District  
21 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
22 wherein the herein violations allegedly occurred.

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

28

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

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

7 **FIRST CAUSE OF ACTION**

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

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

11 21. Defendants have, at all times mentioned herein, acted as either a manufacturer,  
12 distributor, and/or retailer of the Product.

13 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65  
14 list of chemicals known to be hazardous to human health.

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

16 24. Plaintiff, based on his best information and belief, avers that at all relevant times  
17 herein, and at least since October 9, 2017, continuing until the present, that Defendants have  
18 continued to knowingly and intentionally expose California users and consumers of the Product  
19 to DEHP without providing required warnings under Proposition 65.

20 25. The exposures that are the subject of the Notice result from the purchase,  
21 acquisition, handling and recommended use of the product. Consequently, the primary route of  
22 exposure to these chemicals is through dermal absorption. The product can be expected to emit  
23 gas phase DEHP into the air over and accumulate DEHP at the surface over the lifetime of the  
24 product. Users may potentially be exposed to DEHP by dermal absorption through direct skin  
25 contact while handling the plastic case. Concentrations of gas phase DEHP can be expected to  
26 build within the small, enclosed interior of the case. This gas phase DEHP can potentially be  
27 absorbed to the surface of the interior contents that are subsequently handled. If the floor mat  
28 case is stored or transported in a carrier, DEHP that leaches from the item may contaminate other

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

5 26. Plaintiff, based on his 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. Defendants have knowledge that the normal and reasonably foreseeable use of the  
9 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur  
10 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
11 sale and offering of the Product 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 Defendants and requests the  
20 following relief:

- 21 A. That the court assess civil penalties against each Defendant in the amount  
22 of \$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 Defendants  
25 mandating 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: May 11, 2018

BRODSKY & SMITH, LLC

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