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ENDORSED
FILED
ALAMEDA COUNTY

MAR 13 2019

CLERK OF THE SUPERIOR COURT

By AMRIT KHAN Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

J. C. PENNEY CORPORATION, INC.,

Defendant.

Case No.:

RG 19 01 07 34

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
alleges the following cause of action in the public interest of the citizens of the State of
California.

BACKGROUND OF THE CASE

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

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 trampoline safety pads manufactured by King Service Holding, Inc., and distributed, offered for
5 sale and/or sold by defendant J. C. Penney Corporation, Inc. ("JCPenney" or "Defendant") in
6 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 Defendant distributes and/or offers for sale in California,
24 without the required exposure warning, trampoline safety pads ("Product" or "Products") that
25 expose users to DEHP.

26 7. Defendant's failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to DEHP in conjunction with the sale, and/or
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1 distribution of the Product is a violation of Proposition 65 and subjects Defendant 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 Defendant to provide purchasers or users of the Product with the required warnings related to the
7 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 JCPenney, through its business, effectively imports, distributes, sells,
15 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that
16 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
17 California.

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

20 **VENUE AND JURISDICTION**

21 13. Venue is proper in the County of Alameda because one or more of the instances
22 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
23 conducts, and continues to conduct, business in the County of Alameda with respect to the
24 Product.

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

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

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On March 13, 2018, Plaintiff gave notice of alleged violation of Health and Safety
11 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
12 DEHP contained in the Product without proper warning, subject to a private action to Defendant
13 and to the California Attorney General's office and the offices of the County District attorneys
14 and City Attorneys for each city with a population greater than 750,000 persons wherein the
15 herein violations allegedly occurred.

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

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

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

27 **FIRST CAUSE OF ACTION**

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

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

3 21. Defendant has, at all times mentioned herein, acted as either a distributor, and/or
4 retailer of the Product.

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

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

8 24. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since January 6, 2018, continuing until the present, that Defendant has
10 continued to knowingly and intentionally expose California users and consumers of the Product
11 to DEHP without providing required warnings under Proposition 65.

12 25. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the Product. Consequently, the primary route of
14 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can
15 occur through direct skin contact with the cover during routine use when the Product is
16 manipulated with bare hands during fitting and removal from the trampoline or when entering or
17 leaving the trampoline. Surface DEHP from the cover can be transferred to the users clothing
18 when it comes into contact with the Product. The amount of DEHP that migrates out of the
19 Product can be expected to increase during the hotter, summer months. Should the Product be
20 handled when wet from precipitation or the user handle the Product with wet hands, aqueous
21 DEHP skin permeation rates have been reported to be faster than neat DEHP permeation.
22 Finally, while mouthing of the Product does not seem likely, some amount of exposure through
23 ingestion can occur by touching the Product with subsequent touching of the user's hand to
24 mouth.

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

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