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ENDORSED
FILED
ALAMEDA COUNTY
SEP 20 2019
CLERK OF THE SUPERIOR COURT
By _____ Deputy
Roni Gill

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,

12 vs.

13 AAHS! THE ULTIMATE GIFT
14 STORE ; and DOES 1-10, inclusive,
15 Defendant.

Case No.: HG19021205

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

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

Dept.: 517
Judge: Stephen Pulido

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

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in (a)
27 Turtle Accessories charging/sync cords, (b) waterproof cell phone bags, UPC #8 1795001419 9,
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1 and (c) Sanrio pencil cases sold and/or distributed by defendant Aahs! The Ultimate Gift Store
2 (“AAHS” or “Defendant”) in California.

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

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

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

19 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
20 California, without a requisite exposure warning, (a) Turtle Accessories charging/sync cords, (b)
21 waterproof cell phone bags, UPC #8 1795001419 9, and (c) Sanrio pencil cases (the “Products”)
22 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 injunction 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).

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

PARTIES

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

11. Defendant AAHS, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant AAHS is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11. (AAHS and DOE Defendants will hereafter collectively be referred to as “Defendant”).

12. The true name and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

VENUE AND JURISDICTION

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

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

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

12 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

24 18. After receiving the Notices, and to Plaintiff’s best information and belief, none of
25 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
26 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
27 are the subject of the Notices.
28

19. Plaintiff is commencing this action more than sixty (60) days from the date of the Notices.

FIRST CAUSE OF ACTION

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

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

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

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

23. The Products do not comply with the Proposition 65 warning requirements.

24. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since May 3, 2018, continuing until the present, that Defendant has continued to knowingly and intentionally expose California users and consumers of the Products to DEHP without providing required warnings under Proposition 65.

25. The exposures that are the subject of the Notices result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to these DEHP in the Turtle charging cord is through dermal absorption. Users may potentially be exposed to DEHP by dermal absorption through direct skin contact with the cord during routine use when the cord is manipulated with bare hands. If the charging cord is stored or transported in a carrier, DEHP that leaches from the item may contaminate other articles contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the users hand to mouth.

26. The primary route of exposure to DEHP in the waterproof cell phone bag is through dermal absorption. Dermal absorption of DEHP can occur through direct skin contact with the clear plastic during routine use when the pouch is grasped, opened, or manipulated with bare hands. If the plastic window becomes wet due to contact with water and is handled or held

1 in contact with wet skin, aqueous DEHP skin permeation rates have been reported to be faster
2 than neat DEHP permeation. Concentrations of gas phase DEHP can potentially be absorbed to
3 the surface of the interior contents, including but not limited to smartphones that are
4 subsequently handled, held in direct contact with skin or mouthed by the user. If the pouch is
5 stored or transported in a carrier, DEHP that leaches from the clear plastic may contaminate
6 other articles contained within the storage area or carrier that are subsequently handled, worn,
7 mouthed, or ingested by the user. Finally, while mouthing of the product does not seem likely,
8 some amount of exposure through ingestion can occur by touching the clear plastic with
9 subsequent touching of the user's hand to mouth, through touching the DEHP contaminated
10 smartphone screen after it is removed from the pouch with subsequent touching of the user's
11 hand to mouth, or if the smartphone surface is contaminated with DEHP and comes into contact
12 with the user's mouth during use.

13 27. The primary route of exposure to DEHP in the pencil case is through dermal
14 absorption. Users may be exposed to DEHP by dermal absorption through direct skin contact
15 with the plastic case when it is handled. Concentrations of gas phase DEHP can be expected to
16 build within the zippered interior of the pencil bag. Items placed in the pencil case can absorb
17 DEHP and these items can be subsequently handled, held in direct contact with skin, mouthed, or
18 ingested. If the pencil case is stored or transported in a carrier, DEHP that leaches from the item
19 may contaminate other articles contained within these closed spaces that are subsequently
20 handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the product does not
21 seem likely, some amount of exposure through ingestion can occur by touching the product with
22 subsequent touching of the user's hand to mouth or if DEHP contaminated pencils are mouthed.

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

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

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

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

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
11 following relief:

- 12 A. That the court assess civil penalties against Defendant in the amount of
13 \$2,500 per day for each violation in accordance with Health and Safety
14 Code § 25249.7(b);
- 15 B. That the court preliminarily and permanently enjoin Defendant mandating
16 Proposition 65 compliant warnings on the Product;
- 17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 18 D. That the court grant any further relief as may be just and proper.

19 Dated: September 20, 2019

BRODSKY & SMITH, LLC

20 By: 

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