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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

vs.

KOHL'S CORPORATION,

Defendant.

Case No.: HG 19028223

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF

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

Plaintiff Anthony Ferreiro ("Plaintiff"), 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.

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Organize It All, Inc.'s Neu Home Over The Door Hat Organizers and underbed storage chests sold and/or distributed by defendant Kohl's Corporation ("Kohl's" or "Defendant") in California.

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

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

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

6. Plaintiff alleges that Defendant distributes, sells and/or offers for sale in California, without a requisite exposure warning, Organize It All, Inc.'s Neu Home Over The Door Hat Organizers, UPC# 0 14982 59401 3, and underbed storage chests, UPC# 0 14982 56651 5 (collectively, the "Products") that expose persons to DEHP.

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

8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 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 Kohl's, through its business, effectively 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.

12. Plaintiff alleges that defendant Kohl's is a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

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.

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

15. This Court has jurisdiction over Defendant because Defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or has otherwise purposefully availed itself of the California

market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

SATISFACTION OF NOTICE REQUIREMNTS

16. On July 23, 2018, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to DEHP contained in the Products without proper warning, subject to a private action to Defendant and to the California Attorney General's office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

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

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

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, distributer, 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 July 23, 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 Notice result from the purchase, acquisition, handling and recommended use of the Products. Consequently, the primary route of exposure to these chemicals in the underbed storage chest is through dermal absorption. Users may be exposed to DEHP by dermal absorption through direct skin contact with the clear vinyl top during routine use when the underbed storage is manipulated with bare hands. Concentrations of DEHP can be expected to build within the enclosed, zippered interior of the underbed storage bin. DEHP from the clear vinyl can be absorbed to the surface of contents in the storage container that are subsequently handled, worn, mouthed, or ingested by the user. The clothes stored inside the underbed storage can absorb DEHP when and subsequently these contaminated clothes will be a source of DEHP dermal exposure. If the underbed storage 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 user's hand to mouth.

26. The primary route of exposure to these chemicals in the Neu Home Overdoor Hat Organizer is through dermal absorption. Dermal exposure through the hands is possible when the user inserts or removes hats into the clear vinyl pockets. Hats or other articles of clothing stored in the clear vinyl pockets are likely to absorb DEHP during use. The DEHP contaminated articles of clothing will continue to be a source of dermal transfer after the articles are removed. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by handling the product with subsequent touching of the user's hand to mouth.

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

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

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

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

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

PRAYER FOR RELIEF

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

A. That the court assess civil penalties against Defendant in the amount of $2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);

B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;

C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.

D. That the court grant any further relief as may be just and proper.

Dated: July 23, 2019

BRODSKY & SMITH, LLC

By: _____

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