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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF ALAMEDA	
10	ANTHONY FERREIRO,	Case No.: RG19025662
11	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF
12	vs.	(Violation of Health & Safety Code § 25249.5 et
13	KOHL'S CORPORATION, BLUE WAVE PRODUCTS, INC.,	seq.)
14	Defendants.	
15 16	Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the	
17	following cause of action in the public interest of the citizens of the State of California.	
18	BACKGROUND OF THE CASE	
19	1. Plaintiff brings this representative action on behalf of all California citizens to	
20	enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified	
21	at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,	
22	"[n]o person in the course of doing business shall knowingly and intentionally expose any	
23	individual to a chemical known to the state to cause cancer or reproductive toxicity without first	
24	giving clear and reasonable warning to such individual". Health & Safety Code § 25249.6.	
25	2. This complaint is a representative action brought by Plaintiff in the public interest	
26	of the citizens of the State of California to enforce the People's right to be informed of the health	
- 11	hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate	
28	(DINP), toxic chemicals found in (a) Vinyl Repair Kits, UPC # 6 7287520000 9, SKU #	
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF – VIOLATION OF HEALTH & SAFETY CODE §25249.5	

99460919, (b) Hathaway Control Spin Table Tennis 2 Player Racket & Ball Sets, UPC # 672875903177, SKU # 61288724, and (c) Blue Wave Waterproof Pool & Beach Totes, UPC # 672875 50054 3, SKU # 99469135 sold and/or distributed by defendants Kohl's Corporation ("Kohl's") and Blue Wave Products, Inc. ("Blue Wave") (collectively, "Defendants") in California.

- 3. DEHP and DINP are harmful chemicals known to the State of California to cause cancer and, in the case of DEHP, reproductive toxicity as well. On January 1, 1988, and on December 20, 2013, the State of California listed DEHP and DINP as chemicals known to the State to cause cancer and each chemical 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 Defendants manufacture, distribute and/or offer for sale in California, without a requisite exposure warning, (a) Vinyl Repair Kits, UPC # 6 7287520000 9, SKU # 99460919, (b) Hathaway Control Spin Table Tennis 2 Player Racket & Ball Sets, UPC # 672875903177, SKU # 61288724, and (c) Blue Wave Waterproof Pool & Beach Totes, UPC # 672875 50054 3, SKU # 99469135 (the "Products") that expose persons to DEHP and/or DINP.

- 7. Defendants failure to warn consumers and other individuals in California of the health hazards associated with exposure to DEHP/DINP in conjunction with the sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinment and civil penalties described herein.
- 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b).
- 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DEHP and DINP 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).
- Defendant Kohl's, 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 Kohl's is a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.
- Defendant Blue Wave, 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 Blue Wave 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 Defendants conducted, and continue 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 Defendants because each 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 17, 2018, and July 23, 2018, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (collectively, the "Notices") to Defendants concerning the exposure of California citizens to DEHP and/or DINP 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 Notices 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/DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private action.

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- 18. After receiving the Notices, 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 Defendants 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 Notices to Defendants, 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. Defendants have, at all times mentioned herein, acted as manufacturers, distributers, and/or retailers of the Product.
- 22. The Products contain DEHP and/or DINP, 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 11, 2018, continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Products to DEHP and/or DINP 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 Products. Consequently, the primary route of exposure to these chemicals in the Blue Wave Waterproof Pool & Beach Tote is through dermal absorption. Users may be exposed to DEHP by dermal absorption through direct skin contact with the blue plastic during routine use when the tote bag is manipulated with bare hands. If the blue plastic is handled with wet hands or the plastic is wet, aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP permeation. DEHP from the blue plastic can be absorbed to the surface of contents in the tote bag that are subsequently handled, worn mouthed, or ingested by the user. If the tote bag is stored or transported in a carrier, DEHP that leaches

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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 Vinyl Repair Kit is through dermal absorption. Users may be exposed to DINP by dermal absorption through direct skin contact with the clear vinyl during routine use when the plastic is manipulated with bare hands. If the plastic is handled with wet hands or the plastic is wet, such as during use in a vinyl pool, aqueous HMWP skin permeation rates have been reported to be faster than neat HMWP permeation. If the patch kit is stored or transported in a carrier, DINP 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.
- 27. The primary route of exposure to these chemicals in the Hathaway Control Spin Table Tennis 2 Player Racquet and Ball Set is through dermal absorption. Users may be exposed to DEHP by dermal absorption through direct skin contact with the clear plastic during routine use when the case is manipulated with bare hands. Concentrations of gas phase DEHP can be expected to build within the enclosed interior of the table tennis case. This gas phase DEHP can potentially be absorbed to the surface of the interior contents, included but not limited to table tennis rackets and balls, that are subsequently handled by the user. If the table tennis set 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.