

Kimberly Gates Johnson, State Bar No. 282369
Gates Johnson Law
2822 Moraga Street
San Francisco, CA 94122
Telephone: (628) 219-7750
Facsimile: (628) 219-7750
kimberly@gatesjohnson.com

Laralei Paras, State Bar No. 203319
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillsllp.com

Attorneys for Plaintiff
CENTER FOR ADVANCED PUBLIC AWARENESS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

PARIS PRESENTS, INC.; and DOES 1-30,
inclusive,

DEFENDANTS.

Case No.

CV 1904826

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act of
1986 (Health & Safety Code § 25249.5 *et*
seq.)

Action is an Unlimited Civil Case

FILED

DEC 23 2019

JAMES M. KIM, Court Executive Officer,
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest,
2 alleges a cause of action against DEFENDANTS PARIS PRESENTS, INC. and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff CAPA in the public
5 interest of the citizens of the State of California to enforce the People's right to be informed of the
6 health hazards caused by exposures to di(2-ethylhexyl)phthalate (DEHP), a toxic chemical found in
7 and on the makeup sponges sold by Defendants in the State of California.

8 2. By this Complaint, plaintiff seeks to remedy Defendants' continuing failure to warn
9 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq.*
10 ("consumers") that they are being exposed to substances known to the State of California to cause
11 cancer, birth defects and other reproductive harm through exposures to DEHP, present in and on
12 makeup sponges that are manufactured, distributed, imported, marketed, sold and otherwise offered
13 for sale or use throughout the State of California by Defendants and purchased, used or handled by
14 consumers.

15 3. Detectable levels of DEHP are found in and on makeup sponges that Defendants
16 manufacture, import, sell or distribute for sale to consumers and other individuals throughout the
17 State of California.

18 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
19 Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), it is unlawful for a person in the course
20 of doing business to knowingly and intentionally expose consumers in California to chemicals known
21 to the State to cause cancer, birth defects or other reproductive harm, without first providing a "clear
22 and reasonable" health hazard warning to such individuals prior to purchase or use.

23 5. CAPA contends and alleges that Defendants manufacture, distribute, import, sell, and
24 offer for sale, in or into California, products containing DEHP without Proposition 65's requisite
25 health hazard warning regarding the harms associated with exposures to the chemical, including, but
26 not limited to, makeup sponges, such as the *Real Techniques Sam & Nic Miracle Complexion*
27 *Sponge*, UPC #0 79625 91578 5 (hereinafter, the "PRODUCTS"). Defendants' conduct subjects
28

1 them to civil penalties for each violation, as well an enjoinder and preliminary and permanent
2 injunctive relief. Health & Safety Code §§ 25249.7(a) and (b).

3 **PARTIES**

4 6. Plaintiff CAPA is a non-profit organization organized under the laws of California and
5 acting in the interest of the general public, dedicated to protecting the health of California citizens and
6 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
7 consumer products and increasing public awareness of those chemicals through the promotion of
8 sound environmental practices and corporate responsibility. CAPA is a person, within the meaning
9 of Health & Safety Code § 25249.11(a), and CAPA brings this action in the public interest pursuant
10 to Health and Safety Code § 25249.7(d).

11 7. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Defendant
12 PARIS PRESENTS, INC. was and is a person in the course of doing business, with ten (10) or more
13 employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

14 8. PARIS PRESENTS, INC. manufactures, imports, distributes, sells, and/or offers the
15 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
16 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

17 9. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person in
18 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
19 MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or
20 each implies by its conduct that it does such, one or more of the PRODUCTS offered for sale or use
21 in California.

22 10. Defendants DOES 11-20 ("DISTRIBUTOR DEFENDANTS") are each a person in
23 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
24 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each
25 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
26 retailers for sale or use in the State of California

27 11. Defendants DOES 21-30 ("RETAILER DEFENDANTS") are each a person in the
28 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

1 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the
2 State of California.

3 12. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
4 unknown to plaintiff, who, therefore, sues said DEFENDANTS by their fictitious names, pursuant to
5 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each
6 of the fictitiously named Defendants is responsible in some manner for the acts and occurrences
7 alleged herein and the damages caused thereby. When ascertained, their true names and capacities
8 shall be reflected in an amended complaint.

9 13. At all times mentioned herein, PARIS PRESENTS, INC., MANUFACTURER
10 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
11 hereinafter, where appropriate, be referred to collectively as the "DEFENDANTS."

12 **JURISDICTION AND VENUE**

13 14. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code
14 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
15 Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
16 which grants the Superior Court "original jurisdiction in all causes except those given by statute to
17 other trial courts." The statute under which this action is brought does not specify any other basis of
18 subject matter jurisdiction.

19 15. The California Superior Court has jurisdiction over DEFENDANTS based on
20 plaintiff's information and good faith belief that DEFENDANTS are each a person, firm, corporation
21 or association that is a citizen of the State of California, does sufficient business in California, have
22 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
23 themselves of the California market through their manufacture, importation, distribution, promotion,
24 marketing or sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders
25 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
26 play and substantial justice.

27 16. Venue is proper in the Superior Court for the County of Marin pursuant to Code of
28 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,

1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
2 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
3 conducted, and continue to conduct, business in the County of Marin with respect to the PRODUCTS
4 that are the subject of this action.

5 REGULATORY BACKGROUND AND LAW

6 17. In 1986, the people of the State of California approved an initiative addressing
7 concerns regarding the harms caused by hazardous chemicals and declaring their right “[t]o be
8 informed about exposures the chemicals that cause cancer, birth defects, or other reproductive harm.”
9 Ballot Pamp., Proposed General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

10 18. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
11 codified at Health & Safety Code §§ 25249.6 *et seq.*, Proposition 65 states in relevant part that “[n]o
12 person in the course of doing business shall knowingly and intentionally expose any individual to a
13 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
14 warning to such individual...”

15 19. Under the Act, a “person the course of doing business” is defined as a business with
16 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
17 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” health
18 hazard warning. Health & Safety Code § 25249.6

19 20. An exposure to a hazardous chemical is defined as one that “results from a person’s
20 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...” 27
21 C.C.R. § 25600(h).

22 21. Proposition 65 provides that persons violating the statute may be enjoined in any court
23 of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per violation.
24 Health & Safety Code § 25249.7.

25 22. On October 24, 2003, pursuant to Proposition 65, California identified and listed
26 DEHP as a chemical known to cause cancer, birth defects, and reproductive harm. DEHP became
27 subject to the “clear and reasonable warning” requirements one year later, on October 24, 2004. Cal.
28 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

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24. Plaintiff purchased the PRODUCT, without a warning, in California.

26. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting that there was a reasonable and meritorious case for this private action, and included the factual information supporting the certificate when it served the notice on the California Attorney General, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

28. After receiving plaintiff's Notice, no public enforcement agency has commenced and is diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of the Notice.

(Violation of Proposition 65 - Against All DEFENDANTS)

30. DEFENDANTS' PRODUCTS contain DEHP in levels that require a clear and reasonable warning under Proposition 65.

1 31. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
2 import, distribute, sell, and offer for sale in California contain DEHP. DEFENDANTS were also
3 informed of the presence of DEHP in the PRODUCTS through Plaintiff's Notice.

4 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
5 for sale or use in California cause exposures to DEHP, as a result of the reasonably foreseeable use of
6 the PRODUCTS, through dermal contact and/or ingestion.

7 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
8 continues to cause, consumer product exposures to DEHP.

9 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
10 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

11 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
12 of the PRODUCTS will occur by their deliberate, non-accidental participation in the California
13 marketplace.

14 36. The consumer exposures to DEHP, caused by DEFENDANTS and endured by
15 consumers and other individuals in California, are not exempt from the "clear and reasonable"
16 warning requirements of Proposition 65.

17 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
18 in California who have been, or who will be, exposed to DEHP through dermal contact and/or
19 ingestion resulting from their use of the PRODUCTS.

20 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
21 directly by California voters, consumers exposed to DEHP through dermal contact and/or ingestion as
22 a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable"
23 health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no
24 plain, speedy, or adequate remedy at law.

25 39. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
26 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
27 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
28 ongoing and continuous in nature and, unless enjoined, will continue in the future.

40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per day for each violation.

41. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

PRAYER FOR RELIEF

Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them, as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” regarding the harms associated with exposures to DEHP;

2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning”;

3. That the Court, assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred herein; and

5. That the Court grant any further relief as the Court may deem just and equitable.

Dated: December 23, 2019

Respectfully submitted,

SEVEN HILLS LLP

By:

Laralei S. Paras
Attorneys for Plaintiff
Center for Advanced Public Awareness