

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

5 Parker A. Smith  
6 SY & SMITH, PC  
7 6540 Lusk Blvd. Suite 240  
8 San Diego, CA 92121  
9 Telephone: (858) 746-9554  
10 Facsimile: (858) 746-5199

11 *Attorneys for Plaintiff*

ENDORSED  
FILED  
ALAMEDA COUNTY

JUN 4 2020

CLERK OF THE SUPERIOR COURT

By CROGERS

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

RG200635 75

13 ANTHONY FERREIRO, PRECILA  
14 BALABBO, EMA BELL, KINGPUN  
15 CHENG, GABRIEL ESPINOZA,

16 Plaintiffs,

17 v.

18 ELITE HOME PRODUCTS, INC.

19 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

19 Plaintiffs Anthony Ferreiro, Precila Balabbo, Ema Bell, Kingpun Cheng, and Gabriel  
20 Espinoza, (collectively, "Plaintiffs"), by and through their attorneys, allege the following cause of  
21 action in the public interest of the citizens of the State of California.

22 **BACKGROUND OF THE CASE**

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

- 1 -

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF  
HEALTH & SAFETY CODE §25249.5

Filed By Fax

1           2.       This complaint is a representative action brought by Plaintiffs 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 carry/storage cases for bedding products including, but not limited to, sheets, shams, quilts and /or  
5 pillowcases supplied by defendant Elite Home Products, Inc. (“Elite Home” or the “Defendant”)  
6 in California.

7           3.       DEHP is a harmful chemical known to the State of California to cause cancer and  
8 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
9 known to the State to cause cancer and it has come under the purview of Proposition 65 regulations  
10 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
11 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to  
12 cause reproductive toxicity.

13           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
14 within California or sell products therein to comply with Proposition 65 regulations. Included in  
15 such regulations is the requirement that businesses must label any product containing a Proposition  
16 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”  
17 exposing any person to any such listed chemical.

18           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
19 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
20 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
21 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
22 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
23 25249.7.

24           6.       Plaintiffs allege that Defendant supplies and/or offers for sale in California, without  
25 a requisite exposure warning, DreamScape bedding (December 2018 Notice), Hotel Rosemont  
26 Luxury Collection pillowcases, Fiona & Maddox sheet sets, and Palmetto Bay Coastal Collection  
27 pillowcases (July 2019 Notice), Inspirational Collection sheet sets (October 2019 Notice), Luna &  
28

1 Chase sheet sets (January 2020 Notice) (collectively, the “Products”) that expose persons to  
2 DEHP.

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

7 8. Plaintiffs seek civil penalties against Defendant for its violations of Proposition 65  
8 in accordance with Health and Safety Code § 25249.7(b).

9 9. Plaintiffs also seek injunctive relief, preliminarily and permanently, requiring  
10 Defendant to provide purchasers or users of the Products with required warnings related to the  
11 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code  
12 § 25249.7(a).

13 **PARTIES**

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

18 11. Defendant Elite Home, through its business, effectively supplies, imports,  
19 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
20 by its conduct that it supplies, imports, distributes, sells, and/or offers the Products for sale or use  
21 in the State of California.

22 12. Plaintiffs allege that Defendant Elite Home is a “person” in the course of doing  
23 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

24 **VENUE AND JURISDICTION**

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



1 19. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
2 more of the following methods individually or in combination:<sup>1</sup>

- 3 a. A warning that appears on a product’s label or other labeling.
- 4 b. Identification of the product at the retail outlet in a manner which provides a  
5 warning. Identification may be through shelf labeling, signs, menus, or a  
6 combination thereof.
- 7 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
8 prominently placed upon a product’s labels or other labeling or displayed at the  
9 retail outlet with such conspicuousness, as compared with other words,  
10 statements, designs, or devices in the label, labeling or display as to render it  
11 likely to be read and understood by an ordinary individual under customary  
12 conditions of purchase or use.
- 13 d. A system of signs, public advertising identifying the system and toll-free  
14 information services, or any other system that provides clear and reasonable  
15 warnings.

16 20. Proposition 65 provides that any “person who violates or threatens to violate” the  
17 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
18 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
19 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
20 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
21 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

22 **FACTUAL BACKGROUND**

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

<sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning requirements set out in the amended version of 27 CCR 25601, *et.seq.*, as amended on August 30, 2016, and operative on August 30, 2018.

1           22.     The consumer exposures that are the subject of this Complaint result from notice  
2 result from the purchase, acquisition, handling and recommended use of the Products.  
3 Consequently, the primary route of exposure to these chemicals is through dermal absorption.  
4 Dermal absorption of DEHP can occur through direct skin contact when the Products are contacted  
5 with bare hands. Concentrations of DEHP can be expected to build within the interior of the  
6 Products. Articles placed in the Products, including but not limited to pillowcases, can absorb  
7 DEHP. A DEHP contaminated pillowcase can be subsequently handled or placed in direct contact  
8 with the head and face resulting in dermal exposure to DEHP. Finally, while mouthing of the  
9 Products does not seem likely, some amount of exposure through ingestion can occur by touching  
10 the Products with subsequent touching of the user's hand to mouth.

11           23.     Defendant has supplied, processed, marketed, distributed, offered to sell and/or sold  
12 the Products in California since at least December 4, 2018 (DreamScape bedding), July 23, 2019  
13 (Hotel Rosemont Luxury Collection pillowcases, Fiona & Maddox sheet sets, and Palmetto Bay  
14 Coastal Collection pillowcases), October 25, 2019 (Inspiration Collection sheet sets), and January  
15 9, 2020 (Luna & Chase sheet sets). The Products continue to be distributed and sold in California  
16 without the requisite warning information.

17           24.     At all times relevant to this action, Defendant has knowingly and intentionally  
18 exposed users, consumers and/or patients to the Products and the Listed Chemical without first  
19 giving a clear and reasonable exposure warning to such individuals.

20           25.     As a proximate result of acts by Defendant, as a person in the course of doing  
21 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
22 California, including in Alameda County, have been exposed to the Listed Chemical without a  
23 clear and reasonable warning on the Products. The individuals subject to the violative exposures  
24 include normal and foreseeable users, consumers and patients that use the Products, as well as all  
25 others exposed to the Products.

26                           **SATISFACTION OF NOTICE REQUIREMENTS**

27           26.     On December 4, 2018 (DreamScape bedding), July 23, 2019 (Hotel Rosemont  
28 Luxury Collection pillowcases, Fiona & Maddox sheet sets, and Palmetto Bay Coastal Collection



1           34.     Plaintiffs, based on their best information and belief, avers that at all relevant times  
2 herein, and at least since December 4, 2018 (DreamScape bedding), July 23, 2019 (Hotel  
3 Rosemont Luxury Collection pillowcases, Fiona & Maddox sheet sets, and Palmetto Bay Coastal  
4 Collection pillowcases), October 25, 2019 (Inspiration Collection sheet sets), and January 9, 2020  
5 (Luna & Chase sheet sets), continuing until the present, that Defendant has continued to knowingly  
6 and intentionally expose California users and consumers of the Product to DEHP without  
7 providing required warnings under Proposition 65.

8           35.     The consumer exposures that are the subject of this Complaint result from notice  
9 result from the purchase, acquisition, handling and recommended use of the Products.  
10 Consequently, the primary route of exposure to these chemicals is through dermal absorption.  
11 Dermal absorption of DEHP can occur through direct skin contact when the Products are contacted  
12 with bare hands. Concentrations of DEHP can be expected to build within the interior of the  
13 Products. Articles placed in the Products, including but not limited to pillowcases, can absorb  
14 DEHP. A DEHP contaminated pillowcase can be subsequently handled or placed in direct contact  
15 with the head and face resulting in dermal exposure to DEHP. Finally, while mouthing of the  
16 Products does not seem likely, some amount of exposure through ingestion can occur by touching  
17 the Products with subsequent touching of the user's hand to mouth.

18           36.     Plaintiffs, based on their best information and belief, aver that such exposures will  
19 continue every day until clear and reasonable warnings are provided to purchasers and users or  
20 until this known toxic chemical is removed from the Products.

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

25           38.     Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to  
26 this Complaint.

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



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


3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs demand judgment against Defendant and requests the following  
5 relief:

- 6 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per  
7 day for each violation for up to 365 days (up to a maximum civil penalty amount  
8 per violation of \$912,000.00) in accordance with Health and Safety Code §  
9 25249.7(b);
- 10 B. That the court preliminarily and permanently enjoin Defendant mandating  
11 Proposition 65 compliant warnings on the Products;
- 12 C. That the court grant Plaintiffs reasonable attorney's fees and costs of suit.
- 13 D. That the court grant any further relief as may be just and proper.

14 Dated: June 3, 2020

BRODSKY & SMITH, LLC

15 By:   
16 Evan J. Smith (SBN242352)  
17 Ryan P. Cardona (SBN302113)  
18 9595 Wilshire Boulevard, Suite 900  
19 Beverly Hills, CA 90212  
20 Telephone: (877) 534-2590  
21 Facsimile: (310) 247-0160

22 SY & SMITH, PC  
23 Parker A. Smith  
24 6540 Lusk Blvd. Suite 240  
25 San Diego, CA 92121  
26 Telephone: (858) 746-9554  
27 Facsimile: (858) 746-5199

28 *Attorneys for Plaintiffs*