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Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

Plaintiff,

v.

BED BATH & BEYOND INC., a New York
Corporation;
BED BATH & BEYOND OF
CALIFORNIA, LLC, a Delaware
Corporation;
LIBERTY PROCUREMENT CO. INC, a
New York Corporation.;
PACIFIC WORLD CORPORATION, a
California Corporation;
LEVINE LEICHTMAN CAPITAL
PARTNERS, Inc, a California Corporation.;
and DOES 1-20;

Defendants.

CASE NO. **20STCV07954**

COMPLAINT FOR PENALTY AND
INJUNCTION

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 (exceeds \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action against
2 Defendants, BED BATH & BEYOND INC., BED BATH & BEYOND OF CALIFORNIA,
3 LLC, LIBERTY PROCUREMENT CO. INC., PACIFIC WORLD CORPORATION, LEVINE
4 LEICHTMAN CAPITAL PARTNERS, INC. and DOES 1-20 as follows:

5 **THE PARTIES**

- 6 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
7 organization qualified to do business in the State of California. CAG is a person within
8 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
9 as a private attorney general, brings this action in the public interest as defined under
10 Health and Safety Code Section 25249.7, subdivision (d).
- 11 2. Defendant BED BATH & BEYOND INC. (“BED BATH & BEYOND”) is a New York
12 Corporation doing business in the State of California at all relevant times herein.
- 13 3. Defendant BED BATH & BEYOND OF CALIFORNIA, LLC; (“BED BATH &
14 BEYOND OF CALIFORNIA”), is a Delaware LLC, doing business in the State of
15 California at all relative times herein.
- 16 4. Defendant LIBERTY PROCUREMENT CO. INC.; (“LIBERTY PROCUREMENT”), is
17 a New York Corporation, doing business in the State of California at all relative times
18 herein.
- 19 5. Defendant PACIFIC WORLD CORPORATION; (“PACIFIC WORLD”), is a California
20 Corporation, doing business in the State of California at all relative times herein.
- 21 6. Defendant LEVINE LEICHTMAN CAPITAL PARTNERS, INC; (“LEVINE
22 LEICHTMAN”), is a California Corporation, doing business in the State of California at
23 all relative times herein.
- 24 7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30,
25 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
26 Complaint to allege their true names and capacities when ascertained. Plaintiff is
27 informed, believes, and thereon alleges that each fictitiously named defendant is

1 responsible in some manner for the occurrences herein alleged and the damages caused
2 thereby.

3 8. At all times mentioned herein, the term "Defendants" includes BED BATH & BEYOND,
4 BED BATH & BEYOND OF CALIFORNIA, LIBERTY PROCUREMENT, PACIFIC
5 WORLD, LEVINE LEICHTMAN, and DOES 1-20.

6 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
7 times mentioned herein have conducted business within the State of California.

8 10. Upon information and belief, at all times relevant to this action, each of the Defendants,
9 including DOES 1-20, was an agent, servant, or employee of each of the other
10 Defendants. In conducting the activities alleged in this Complaint, each of the Defendants
11 was acting within the course and scope of this agency, service, or employment, and was
12 acting with the consent, permission, and authorization of each of the other Defendants.
13 All actions of each of the Defendants alleged in this Complaint were ratified and
14 approved by every other Defendant or their officers or managing agents. Alternatively,
15 each of the Defendants aided, conspired with and/or facilitated the alleged wrongful
16 conduct of each of the other Defendants.

17 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
18 Defendants was a person doing business within the meaning of Health and Safety Code
19 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
20 employees at all relevant times.

21 **JURISDICTION**

22 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
23 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
24 those given by statute to other trial courts. This Court has jurisdiction over this action
25 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
26 violations of Proposition 65 in any Court of competent jurisdiction.

27 13. This Court has jurisdiction over Defendants named herein because Defendants either
28

1 reside or are located in this State or are foreign corporations authorized to do business in
2 California, are registered with the California Secretary of State, or who do sufficient
3 business in California, have sufficient minimum contacts with California, or otherwise
4 intentionally avail themselves of the markets within California through their manufacture,
5 distribution, promotion, marketing, or sale of their products within California to render
6 the exercise of jurisdiction by the California courts permissible under traditional notions
7 of fair play and substantial justice.

- 8 14. Venue is proper in the County of Los Angeles because one or more of the instances of
9 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
10 because Defendants conducted, and continue to conduct, business in the County of Los
11 Angeles with respect to the consumer product that is the subject of this action.

12 **BACKGROUND AND PRELIMINARY FACTS**

- 13 15. In 1986, California voters approved an initiative to address growing concerns about
14 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
15 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
16 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
17 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
18 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
19 from contamination, to allow consumers to make informed choices about the products
20 they buy, and to enable persons to protect themselves from toxic chemicals as they see
21 fit.

- 22 16. Proposition 65 requires the Governor of California to publish a list of chemicals known to
23 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
24 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
25 chemicals and chemical families. Proposition 65 imposes warning requirements and
26 other controls that apply to Proposition 65-listed chemicals.

- 27 17. All businesses with ten (10) or more employees that operate or sell products in California
28

1 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
2 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
3 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
4 reasonable” warnings before exposing a person, knowingly and intentionally, to a
5 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

6 18. Proposition 65 provides that any person "violating or threatening to violate" the statute
7 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
8 "Threaten to violate" means "to create a condition in which there is a substantial
9 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
10 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
11 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

12 19. Plaintiff identified certain practices of manufacturers and distributors of products bearing
13 Di (2-ethylhexyl) phthalate ("DEHP") exposing, knowingly and intentionally, persons in
14 California to said Proposition 65-listed chemical without first providing clear and
15 reasonable warnings to the exposed persons prior to the time of exposure. Plaintiff later
16 discerned that Defendants engaged in such practice.

17 20. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
18 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
19 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
20 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
21 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

22 21. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
23 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
24 *Regs.* tit. 27, § 27001(c)). DEHP is known to the State to cause developmental and male
25 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
26 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to
27 the State to cause developmental and reproductive toxicity, DEHP became fully subject

to Proposition 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

22. On or about May 16, 2017 Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures subject to a private action to BED BATH & BEYOND, BED BATH & BEYOND OF CALIFORNIA, LIBERTY PROCUREMENT, PACIFIC WORLD, LEVINE LEICHTMAN and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Eye Kits with Polymer Components containing DEHP.

23. On or about July 17, 2019 Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures subject to a private action to BED BATH & BEYOND, BED BATH & BEYOND OF CALIFORNIA, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Vinyl Insulated Coax Cable containing DEHP.

24. On or about December 4, 2019 Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures subject to a private action to BED BATH & BEYOND, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Vinyl Insulated Coax Cable containing DEHP.

25. Before sending the notice of alleged violations, Plaintiff investigated the consumer products involved, the likelihood that such products would cause users to suffer significant exposures to DEHP, and the corporate structure of each of the Defendants.

26. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the

1 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
2 Plaintiff who executed the certificate had consulted with at least one person with relevant
3 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
4 subject Proposition 65-listed chemical of this action. Based on that information, the
5 attorney for Plaintiff who executed the Certificate of Merit believed there was a
6 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
7 to the Certificate of Merit served on the Attorney General the confidential factual
8 information sufficient to establish the basis of the Certificate of Merit.

9 27. Plaintiff's notice of alleged violations also included a Certificate of Service and a
10 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
11 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

12 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
13 gave notice of the alleged violations to BED BATH & BEYOND, BED BATH &
14 BEYOND OF CALIFORNIA, LIBERTY PROCUREMENT, PACIFIC WORLD,
15 LEVINE LEICHTMAN, and the public prosecutors referenced in Paragraphs 22-24.

16 29. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
17 any applicable district attorney or city attorney has commenced and is diligently
18 prosecuting an action against the Defendants.

19
20 **FIRST CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against BED BATH &**
22 **BEYOND, BED BATH & BEYOND OF CALIFORNIA, LIBERTY**
23 **PROCUREMENT, PACIFIC WORLD, LEVINE LEICHTMAN, and DOES 1-10**
24 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
25 **Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

26 **Beauty Accessories**

27 30. Plaintiff repeats and incorporates by reference paragraphs 1 through 29 of this complaint
28 as though fully set forth herein.

31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Eye Kits with Polymer Components including but not

1 limited “Harmon”; “Face Values”; “Professional Quality Eye Care”; “5-Piece Total Eye
2 Kit”; “Distributed by Harmon Stores, Inc.”; “www.facevalues.com”; “HM321”; “R392”;
3 07160314189 (“EYE KITS”).

4 32. EYE KITS contain DEHP.

5 33. Defendants knew or should have known that DEHP has been identified by the State of
6 California as a chemical known to cause cancer and reproductive toxicity and therefore
7 was subject to Proposition 65 warning requirements. Defendants were also informed of
8 the presence of DEHP in EYE KITS within Plaintiff’s notice of alleged violations further
9 discussed above at Paragraph 22.

10 34. Plaintiff’s allegations regarding EYE KITS concerns “[c]onsumer products exposure[s],”
11 which “is an exposure that results from a person’s acquisition, purchase, storage,
12 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
13 that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).
14 EYE KITS are consumer products, and, as mentioned herein, exposures to DEHP took
15 place as a result of such normal and foreseeable consumption and use.

16 35. Plaintiff is informed, believes, and thereon alleges that between May 16, 2014 and the
17 present, each of the Defendants knowingly and intentionally exposed California
18 consumers and users of EYE KITS, which Defendants manufactured, distributed, or sold
19 as mentioned above, to DEHP, without first providing any type of clear and reasonable
20 warning of such to the exposed persons before the time of exposure. Defendants have
21 distributed and sold EYE KITS in California. Defendants know and intend that
22 California consumers will use and consume EYE KITS, thereby exposing them to DEHP.
23 Defendants thereby violated Proposition 65.

24 36. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by handling EYE KITS without wearing gloves or any other
26 personal protective equipment, or by touching bare skin or mucous membranes with
27 gloves after handling EYE KITS, as well as through direct and indirect hand to mouth

1 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
2 EYE KITS.

3 37. And as to Defendants' employees, employees may be exposed to DEHP in the course of
4 their employment by handling, distributing, and selling EYE KITS.

5 38. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to EYE KITS have been ongoing and continuous, as Defendants
7 engaged and continue to engage in conduct which violates Health and Safety Code
8 Section 25249.6, including the manufacture, distribution, promotion, and sale of EYE
9 KITS, so that a separate and distinct violation of Proposition 65 occurred each and every
10 time a person was exposed to DEHP by EYE KITS as mentioned herein.

11 39. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
13 violations alleged herein will continue to occur into the future.

14 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to DEHP from EYE KITS, pursuant to Health
16 and Safety Code Section 25249.7(b).

17 41. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
18 filing this Complaint.

19
20 **SECOND CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against BED BATH &**
22 **BEYOND, BED BATH & BEYOND OF CALIFORNIA, and DOES 11-20 for**
23 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**
24 **of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

25 **Home Accessories**

26 42. Plaintiff repeats and incorporates by reference paragraphs 1 through 41 of this complaint
27 as though fully set forth herein.

28 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of Vinyl Insulated Coax Cable including but not limited

"IHome;" "Audio;" "Video;" "connect two devices with a "F" type RG6 coax connection;" "50ft.;" "Coax cable;" "HDTV connection;" "Cable Box connection;" "Satellite [sic]TV connection;" "0518384 Bed Bath & Beyond;" "model:IH-CT800B;" "2018 © Lifeworks Technology Group LLC;" "UPC#812350147720 ("COAX CABLES").

44. COAX CABLES contain DEHP.

45. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in COAX CABLES within Plaintiff's notice of alleged violations further discussed above at Paragraphs 23 and 24.

46. Plaintiff's allegations regarding COAX CABLES concerns "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b). COAX CABLES are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

47. Plaintiff is informed, believes, and thereon alleges that between July 17, 2016 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of COAX CABLES, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure.

Defendants have distributed and sold COAX CABLES in California. Defendants know and intend that California consumers will use and consume COAX CABLES, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

48. The principal routes of exposure are through dermal contact, ingestion and inhalation. Persons sustain exposures by handling COAX CABLES without wearing gloves or any

1 other personal protective equipment, or by touching bare skin or mucous membranes with
2 gloves after handling COAX CABLES, as well as through direct and indirect hand to
3 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
4 from COAX CABLES.

5 49. And as to Defendants' employees, employees may be exposed to DEHP in the course of
6 their employment by handling, distributing, and selling COAX CABLES.

7 50. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
8 Proposition 65 as to COAX CABLES have been ongoing and continuous, as Defendants
9 engaged and continue to engage in conduct which violates Health and Safety Code
10 Section 25249.6, including the manufacture, distribution, promotion, and sale of COAX
11 CABLES, so that a separate and distinct violation of Proposition 65 occurred each and
12 every time a person was exposed to DEHP by COAX CABLES as mentioned herein.

13 51. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur into the future.

16 52. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to DEHP from COAX CABLES, pursuant to
18 Health and Safety Code Section 25249.7(b).

19 53. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
20 filing this Complaint.

21 **PRAYER FOR RELIEF**

22 Plaintiff demands against each of the Defendants as follows:

- 23 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 24 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
- 25 3. Costs of suit;
- 26 4. Reasonable attorney fees and costs; and
- 27 5. Any further relief that the court may deem just and equitable.

1 Dated: February 25, 2020

YEROUSHALMI & YEROUSHALMI

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4 BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.