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ALAMEDA COUNTY  
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CLERK OF  
By JAMIE THOMAS, Deputy

Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 EMA BELL,

11 Plaintiff,

12 vs.

13 ASWEETS GLOBAL, INC., TOY  
14 CRAZY, INC.,

15 Defendants.

Case No.:

RG20073934

COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF

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

16 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause  
17 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 at  
21 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  
27 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
28 Asweets smores set – cases/bags sold and/or distributed by defendant Asweets Global, Inc.

Filed By Fax

1 (“Asweets”) and defendant Toy Crazy, Inc. (“Toy Crazy”) (collectively, the “Defendants”) in  
2 California.

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

9 4. Proposition 65 requires all businesses with ten (10) or more employees that operate  
10 within California or sell products therein to comply with Proposition 65 regulations. Included in  
11 such regulations is the requirement that businesses must label any product containing a Proposition  
12 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”  
13 exposing any person to any such listed chemical.

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
21 without a requisite exposure warning, Asweets smores set – cases/bags (the “Products”) that  
22 expose persons to DEHP.

23 7. Defendants’ failure to warn consumers and other individuals in California of the  
24 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution  
25 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil  
26 penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
2 Defendants to provide purchasers or users of the Products with required warnings related to the  
3 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code  
4 § 25249.7(a).

5 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

6 **PARTIES**

7 11. Plaintiff is a citizen of the State of California acting in the interest of the general  
8 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
9 improve human health by reducing hazardous substances contained in such items. She brings this  
10 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11 12. Defendant Asweets, through its business, effectively imports, distributes, sells,  
12 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
13 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
14 Plaintiff alleges that defendant Asweets is a "person" in the course of doing business within the  
15 meaning of Health & Safety Code sections 25249.6 and 25249.11.

16 13. Defendant Toy Crazy, through its business, effectively imports, distributes, sells,  
17 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
18 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
19 Plaintiff alleges that defendant Toy Crazy is a "person" in the course of doing business within the  
20 meaning of Health & Safety Code sections 25249.6 and 25249.11.

21 **VENUE AND JURISDICTION**

22 14. Venue is proper in the County of Alameda because one or more of the instances of  
23 wrongful conduct occurred, and continue to occur in this county and/or because Defendants  
24 conducted, and continue to conduct, business in the County of Alameda with respect to the  
25 Products.

26 15. This Court has jurisdiction over this action pursuant to California Constitution  
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
2 jurisdiction over this lawsuit.

3 16. This Court has jurisdiction over Defendants because each defendant is either a  
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
5 registered with the California Secretary of State as foreign corporations authorized to do business  
6 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
8 and permissible with traditional notions of fair play and substantial justice.

9 **STATUTORY BACKGROUND**

10 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
12 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

13 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
14 “clear and reasonable warning” before being exposed to substances listed by the State of California  
15 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

16 No person in the course of doing business shall knowingly and intentionally expose any  
17 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
18 first giving clear and reasonable warning to such individual...

19 19. An exposure to a chemical in a consumer product is one “which results from a  
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
23 shall provide a warning to any person to whom the product is sold or transferred unless the product  
24 is packaged or labeled with a clear and reasonable warning.”

1 20. 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  
5 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
6 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 retail outlet  
9 with such conspicuousness, as compared with other words, statements, designs, or devices  
10 in the label, labeling or display as to render it likely to be read and understood by an  
11 ordinary individual under customary conditions of purchase or use.

12 d. A system of signs, public advertising identifying the system and toll-free  
13 information services, or any other system that provides clear and reasonable warnings.

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

20 **FACTUAL BACKGROUND**

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

25  
26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 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 reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a  
2 chemical known to the State to cause cancer and reproductive toxicity.

3         23.       The consumer exposures that are the subject of this Complaint result from through  
4 dermal absorption. Dermal absorption of DEHP can occur through direct skin contact when the  
5 Products are contacted with bare hands. Concentrations of DEHP can be expected to build within  
6 the interior of the Products. Articles placed in the Products can absorb DEHP. DEHP contaminated  
7 items, as a result of being stored in the Products, can be subsequently handled or placed in direct  
8 contact with exposed skin 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         24.       Defendants have manufactured, processed, marketed, distributed, offered to sell  
12 and/or sold the Products in California since at least September 25, 2019. The Products continue to  
13 be distributed and sold in California without the requisite warning information.

14         25.       At all times relevant to this action, Defendants have knowingly and intentionally  
15 exposed users, consumers and/or patients to the Products and the Listed Chemical without first  
16 giving a clear and reasonable exposure warning to such individuals.

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

23                                 **SATISFACTION OF NOTICE REQUIREMENTS**

24         27.       On September 25, 2019, Plaintiff gave notice of alleged violation of Health and  
25 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens  
26 to DEHP contained in the Products without proper warning, subject to a private action to  
27 Defendants and to the California Attorney General's office and the offices of the County District  
28

1 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein  
2 the herein violations allegedly occurred.

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

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

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

14 **FIRST CAUSE OF ACTION**

15 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

16 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of  
17 this Complaint as though fully set forth herein.

18 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer  
19 of the Product.

20 33. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list  
21 of chemicals known to be hazardous to human health.

22 34. The Products do not comply with the Proposition 65 warning requirements.

23 35. Plaintiff, based on her best information and belief, avers that at all relevant times  
24 herein, and at least since September 25, 2019, continuing until the present, that Defendants have  
25 continued to knowingly and intentionally expose California users and consumers of the Products  
26 to DEHP without providing required warnings under Proposition 65.

27 36. The exposures that are the subject of the Notice result from the purchase,  
28 acquisition, handling and recommended use of the Products. Consequently, the primary route of

1 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur  
2 through direct skin contact when the Products are contacted with bare hands. Concentrations of  
3 DEHP can be expected to build within the interior of the Products. Articles placed in the Products  
4 can absorb DEHP. DEHP contaminated items, as a result of being stored in the Products, can be  
5 subsequently handled or placed in direct contact with exposed skin resulting in dermal exposure  
6 to DEHP. Finally, while mouthing of the Products does not seem likely, some amount of exposure  
7 through ingestion can occur by touching the Products with subsequent touching of the user's hand  
8 to mouth.

9         37. Plaintiff, based on her best information and belief, avers that such exposures will  
10 continue every day until clear and reasonable warnings are provided to Product purchasers and  
11 users or until this known toxic chemical is removed from the Product.

12         38. Defendants have knowledge that the normal and reasonably foreseeable use of the  
13 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur  
14 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of  
15 the Products to consumers in California

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

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

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



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
3 relief:

4 A. That the court assess civil penalties against each defendant in the amount of \$2,500  
5 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

7 B. That the court preliminarily and permanently enjoin Defendants mandating  
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
10 amount of \$50,000.00.

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

12 Dated: September 1, 2020

BRODSKY & SMITH, LLC

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