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CENTER FOR ADVANCED PUBLIC AWARENESS

PER LOCAL RULE, THIS  
CASE IS ASSIGNED TO  
DEPT 12, FOR ALL  
PURPOSES

FILED  
SEP 15 2020

K. BIEKER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA

By \_\_\_\_\_  
A. Stewart, Deputy Clerk

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
UNLIMITED CIVIL JURISDICTION

CENTER FOR ADVANCED PUBLIC  
AWARENESS,

Plaintiff,

v.

AMERICAN BEAUTY EQUIPMENT LLC; and  
DOES 1-30, inclusive,

DEFENDANTS.

Case No. **C20 - 01840**

**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

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest,  
2 alleges a cause of action against DEFENDANTS AMERICAN BEAUTY EQUIPMENT LLC and  
3 DOES 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

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

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

16 3. Detectable levels of DEHP are found in and on seats with vinyl upholstery that  
17 Defendants manufacture, import, sell or distribute for sale to individuals throughout the State of  
18 California.

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

24 5. CAPA contends and alleges that Defendants manufacture, distribute, import, sell, and  
25 offer for sale, in or into California, products containing DEHP without Proposition 65’s requisite  
26 health hazard warning regarding the harms associated with exposures to the chemical, including, but  
27 not limited to, seats with vinyl upholstery, such as the *Italica 0001 Child Salon Booster Seat Part*  
28 *#ITA-0001*, (hereinafter, the “PRODUCTS”). Defendants’ conduct subjects them to civil penalties

1 for each violation, as well an injunction and preliminary and permanent injunctive relief. Health &  
2 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 AMERICAN BEAUTY EQUIPMENT LLC was and is a person in the course of doing business, with  
13 ten (10) or more employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

14 8. AMERICAN BEAUTY EQUIPMENT LLC manufactures, imports, distributes, sells,  
15 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that  
16 it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State  
17 of California.

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

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

28 11. Defendants DOES 21-30 (“RETAILER DEFENDANTS”) are each a person in the

1 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
2 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the  
3 State of California.

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

10 13. At all times mentioned herein, AMERICAN BEAUTY EQUIPMENT LLC,  
11 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER  
12 DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the  
13 “DEFENDANTS.”

#### 14 **JURISDICTION AND VENUE**

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

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

1           16.     Venue is proper in the Superior Court for the County of Contra Costa pursuant to Code  
2 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
3 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
4 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
5 conducted, and continue to conduct, business in the County of Contra Costa with respect to the  
6 PRODUCTS that are the subject of this action.

7   **REGULATORY BACKGROUND AND LAW**

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

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

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

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

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

27           22.     On October 24, 2003, pursuant to Proposition 65, California identified and listed  
28 DEHP as a chemical known to cause cancer, birth defects, and reproductive harm. DEHP became

1 subject to the “clear and reasonable warning” requirements one year later, on October 24, 2004. Cal.  
2 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

### 3 STATEMENT OF FACTS

4 23. Plaintiff purchased, investigated and tested DEFENDANTS’ PRODUCTS at an  
5 accredited lab, and, after consultation with a person with relevant and appropriate expertise who  
6 reviewed the collected data and analyzed the risk of exposures to DEHP, determined the PRODUCTS  
7 exposure consumers in California to the listed chemical at levels that require a warning under the  
8 statute, based on consumers touching, handling or otherwise utilizing the PRODUCTS in accordance  
9 with their reasonably foreseeable usage.

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

11 25. DEFENDANTS are each a person in the course of doing business.

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

16 27. Thereafter, on July 6, 2020, plaintiff served a 60-Day Notice of Violation (“Notice”),  
17 together with the requisite certificate of merit, on AMERICAN BEAUTY EQUIPMENT LLC, the  
18 California Attorney General’s Office, and the requisite public enforcement agencies, alleging that, as  
19 a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were and  
20 are being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS  
21 without first receiving a “clear and reasonable warning,” as required by Proposition 65.

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

### 25 FIRST CAUSE OF ACTION

#### 26 **(Violation of Proposition 65 - Against All DEFENDANTS)**

27 29. CAPA realleges and incorporates by reference, as if fully stated herein, the allegations  
28 set forth in Paragraphs 1 through 28, inclusive.

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

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

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

9           33.     The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
10 continues to cause, exposures to DEHP.

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

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

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

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

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

27          39.     DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
28 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have

1 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are  
2 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

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

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

23 Dated: September 14, 2020

Respectfully submitted,

24 SEVEN HILLS LLP

25  
26 By: 

Laralei S. Paras

Attorneys for Plaintiff

Center for Advanced Public Awareness