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1 2 3 4	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113) BRODSKY SMITH 9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160	ELECTRONICALLY FILED Superior Court of California, County of San Francisco 06/28/2021 Clerk of the Court BY: ANGELICA SUNGA Deputy Clerk	
5	Attorneys for Plaintiff		
6 7	SUPERIOR COURT OF THE STATE OF CALIFORNIA CGC-21-593179		
8	COUNTY OF SAN FRANCISCO		
o 9	ANTHONY FERREIRO,	Case No.:	
9	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF	
11	vs.	(Violation of Health & Safety Code § 25249.5 et	
12	SOLUTIONS MURALES PROSLAT, INC., BED BATH & BEYOND, INC.,	seq.)	
13	Defendants.		
14			
15	Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the following		
16	cause of action in the public interest of the citizens of the State of California.		
17	BACKGROUND OF THE CASE		
18	1. Plaintiff brings this representa	tive action on behalf of all California citizens to	
19	enforce relevant portions of Safe Drinking Wa	ter and Toxic Enforcement Act of 1986, codified at	
20	the Health and Safety Code § 25249.5 et seq	("Proposition 65"), which reads, in relevant part,	
21	"[n]o person in the course of doing busine	ss shall knowingly and intentionally expose any	
22	individual to a chemical known to the state to	cause cancer or reproductive toxicity without first	
23	giving clear and reasonable warning to such in	ndividual". Health & Safety Code § 25249.6.	
24	2. This complaint is a representation	ive action brought by Plaintiff in the public interest	
25	of the citizens of the State of California to enf	orce the People's right to be informed of the health	
26	hazards caused by exposure to di(2-ethylhex	xyl) phthalate (DEHP), a toxic chemical found in	
27	Proslat double hooks sold and/or distribute	ed by defendant Solutions Murales Proslat, Inc.	
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		ND INJUNCTIVE RELEIF – VIOLATION OF ETY CODE §25249.5	

("Proslat") and defendant Bed Bath & Beyond, Inc. ("Bed Bath") (collectively, the "Defendants")
 in California.

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

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

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

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

5 6 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

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. He brings this
10 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

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

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VENUE AND JURISDICTION

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

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

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

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

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:

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

19. An exposure to a chemical in a consumer product is one "which 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." (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that "a person in the course of doing business ... shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning."

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

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A warning that appears on a product's label or other labeling.

b. Identification of the product at the retail outlet in a manner which provides a warning. Identification may be through shelf labeling, signs, menus, or a combination thereof.

c. The warnings provided pursuant to subparagraphs (a) and (b) shall be prominently placed upon a product's labels or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

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

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

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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

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 ¹ 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.

reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a
 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 dermal 4 absorption. The Products can be expected to emit gas-phase DEHP into the air and accumulate 5 DEHP at the surface over the lifetime of the Products. Dermal absorption of DEHP can occur 6 through direct skin contact when the Products are contacted with bare hands. DEHP that leaches 7 from the Products may contaminate other articles hung on the Products that are subsequently 8 handled or worn by the user. Finally, while mouthing of the Products does not seem likely, some 9 amount of exposure through ingestion can occur by handling the Products with subsequent 10 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 July 8, 2020. The Products continue to be
13 distributed and sold in California without the requisite warning information.

At all times relevant to this action, Defendants have knowingly and intentionally
exposed users and/or consumers of the Products to DEHP without first giving a clear and
reasonable exposure warning to such individuals.

17 26. As a proximate result of acts by each 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 San Francisco County, have been exposed to DEHP without a clear and
20 reasonable warning on the Products. The individuals subject to the violative exposures include
21 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
22 the Products.

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SATISFACTION OF NOTICE REQUIREMNTS

24 27. On July 8, 2020, Plaintiff gave notice of alleged violation of Health and Safety
25 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
26 DEHP contained in the Products without proper warning, subject to a private action to Defendants
27 and to the California Attorney General's office and the offices of the County District attorneys and
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City Attorneys for each city with a population greater than 750,000 persons wherein the herein
 violations allegedly occurred.

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

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

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FIRST CAUSE OF ACTION

(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 distributer, and/or retailer
19 of the Products.

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

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

35. Plaintiff, based on his best information and belief, avers that at all relevant times
herein, and at least since July 8, 2020, continuing until the present, that Defendants have continued
to knowingly and intentionally expose California users and consumers of the Products to DEHP
without providing required warnings under Proposition 65.

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

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exposure to these chemicals is through dermal absorption. The Products can be expected to emit
gas-phase DEHP into the air and accumulate DEHP at the surface over the lifetime of the Products.
Dermal absorption of DEHP can occur through direct skin contact when the Products are contacted
with bare hands. DEHP that leaches from the Products may contaminate other articles hung on the
Products that are subsequently handled or worn by the user. Finally, while mouthing of the
Products does not seem likely, some amount of exposure through ingestion can occur by handling
the Products with subsequent touching of the user's hand to mouth.

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

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

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

40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.
41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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

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: June 28, 2021 BRODSKY SMITH	
13	By:	
14	Evan J. Smith (SRN242352) Ryan P. Cardona (SBN302113)	
15	9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212	
16	Telephone: (877) 534-2590 Facsimile: (310) 247-0160	
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