

1 Laralei Paras, State Bar No. 203319  
SEVEN HILLS LLP  
2 4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
3 Telephone: (415) 926-7247  
laralei@sevenhillsllp.com

4 Attorneys for Plaintiff  
5 MY NGUYEN

ENDORSED  
FILED  
San Francisco County Superior Court  
DEC 23 2020  
CLERK OF THE COURT  
BY: KALENE APOLONIO  
Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 CITY AND COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

10  
11 MY NGUYEN,

12 Plaintiff,

13 v.

14 EROICA ENTERPRISES, INC.; and  
15 DOES 1-30, inclusive,

16 Defendants.

Case No.

**CGC-20-588603**

**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 MY NGUYEN, acting in the public interest, alleges a cause of action against  
2 DEFENDANTS EROICA ENTERPRISES, INC. and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff MY NGUYEN in the  
5 public interest of the citizens of the State of California to enforce the People’s right to be informed of  
6 the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“**DEHP**”), a toxic chemical  
7 found in and on the vinyl fabric sold by defendants in the State of California.

8 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
9 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*  
10 they are being exposed to substances known to the State of California to cause birth defects and other  
11 reproductive harm through exposures to DEHP, present in and on vinyl fabric manufactured,  
12 distributed, imported, sold and otherwise offered for sale or use throughout the State of California by  
13 defendants.

14 3. Detectable levels of DEHP are found in and on the vinyl fabric defendants  
15 manufacture, import, sell or distribute for sale to individuals throughout the State of California.

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

21 5. MY NGUYEN contends and alleges defendants manufacture, distribute, import, sell,  
22 and offer for sale, in or into California, vinyl fabric containing DEHP without Proposition 65’s  
23 requisite health hazard warning about the presence of, and the harms associated with exposures to,  
24 the chemical, including, but not limited to, *Intrepid Faux Leather Pearl Fabric*, (collectively referred  
25 to hereinafter, the “**PRODUCTS**”). Defendants’ conduct subjects them to civil penalties for each  
26 violation, as well an injunction and preliminary and permanent injunctive relief. Health & Safety  
27 Code §§ 25249.7(a) and (b).

28 ///

1 **PARTIES**

2 1. Plaintiff MY NGUYEN is a citizen of the state of California seeking to eliminate toxic  
3 chemicals in consumer products, to increase public awareness of those chemicals and to promote  
4 corporate responsibility. MY NGUYEN is a person within the meaning of Health & Safety Code  
5 § 25249.11(a) and brings this action in the public interest pursuant to Health and Safety Code  
6 § 25249.7(d).

7 2. Plaintiff is informed, believes and thereon alleges that, at all relevant times,  
8 Defendant EROICA ENTERPRISES, INC. was and is a person in the course of doing business, with  
9 ten (10) or more employees, within the meaning of Health and Safety Code §§ 25249.6 and  
10 25249.11.

11 3. EROICA ENTERPRISES, INC. manufactures, imports, distributes, sells, and/or  
12 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
13 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of  
14 California.

15 4. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person  
16 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
17 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and  
18 manufacture, or each impliedly does so by its conduct, one or more of the PRODUCTS offered for  
19 sale or use in California.

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

25 6. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the  
26 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
27 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the  
28 State of California.



1 because DEFENDANTS conducted, and continue to conduct, business in the city and county of San  
2 Francisco with respect to the PRODUCTS that are the subject of this action.

3 **REGULATORY BACKGROUND AND LAW**

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

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

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

17 15. An exposure to a hazardous chemical is defined as one that “results from a person’s  
18 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”  
19 27 C.C.R. § 25600(h).

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

23 17. On October 24, 2003, pursuant to Proposition 65, California identified and listed  
24 DEHP as a chemical known to cause cancer, birth defects, and reproductive harm. DEHP became  
25 subject to the “clear and reasonable warning” requirements one year later, on October 24, 2004. Cal.  
26 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

27 ///

28 ///

1 **STATEMENT OF FACTS**

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

8 19. Plaintiff purchased, or caused to be purchased, the PRODUCT without a warning in  
9 the state of California.

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

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

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

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Proposition 65 - Against All DEFENDANTS)**

25 23. MY NGUYEN realleges and incorporates by reference, as if fully stated herein, the  
26 allegations set forth in Paragraphs 1 through 22, inclusive.

27 24. DEFENDANTS’ PRODUCTS contain DEHP in levels that require a clear and  
28 reasonable warning under Proposition 65.

1           25.     DEFENDANTS knew or should have known that the PRODUCTS they manufacture,  
2 import, distribute, sell, and offer for sale in California contain DEHP. Plaintiff’s Notice also  
3 informed DEFENDANTS of the presence of DEHP in the PRODUCTS.

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

7           27.     The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
8 continues to cause, exposures to DEHP.

9           28.     DEFENDANTS know that the normal and reasonably foreseeable use of the  
10 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

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

14          30.     The exposures to DEHP, caused by DEFENDANTS and endured by consumers and  
15 other individuals in California, are not exempt from the “clear and reasonable” warning requirements  
16 of Proposition 65.

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

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

25          33.     DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
26 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have  
27 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are  
28 ongoing and continuous in nature and, unless enjoined, will continue in the future.

