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8 CENTER FOR ADVANCED PUBLIC AWARENESS

NO SUMMONS ISSUED

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FILED

Superior Court of California,
County of San Francisco

03/04/2021

Clerk of the Court

BY: JACKIE LAPREVOTTE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CGC-21-590102

10 CENTER FOR ADVANCED PUBLIC
11 AWARENESS,

12 Plaintiff,

13 v.

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

16 DEFENDANTS.

Case No.

**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.)

UNLIMITED CIVIL

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest,
2 alleges a cause of action against DEFENDANTS MARC DANIEL ENTERPRISES, INC. and
3 DOES 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

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

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

15 3. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
16 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
17 (“consumers”) they are being exposed to substances known to the State of California to cause cancer,
18 birth defects and other reproductive harm through exposures to DEHP, when they purchase, use or
19 handle Defendants’ seats with vinyl upholstery.

20 4. Detectable levels of DEHP are found in and on the seats with vinyl upholstery that
21 Defendants manufacture, import, sell or distribute for sale to individuals throughout California.

22 5. CAPA contends and alleges Defendants manufacture, distribute, import, sell, and offer
23 for sale, in and into California products containing DEHP, without Proposition 65’s requisite health
24 hazard warning regarding the harms associated with exposures to the chemical, including, but not
25 limited to, seats with vinyl upholstery, such as the *Child Booster Seat Model #OD-0107; C/No. OD-*
26 *121519/267*, (“PRODUCTS”). Defendants’ conduct subjects them to civil penalties for each
27 violation, as well an enjoinder and preliminary and permanent injunctive relief. Health & Safety
28 Code §§ 25249.7(a) and (b).

1 **PARTIES**

2 6. Plaintiff CAPA is a non-profit corporation organized under the laws of California and
3 acting in the interest of the general public, dedicated to protecting the health of California citizens and
4 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
5 consumer products and to increasing public awareness of those chemicals through the promotion of
6 sound environmental practices and corporate responsibility. CAPA is a person within the meaning of
7 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to
8 Health and Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant
10 MARC DANIEL ENTERPRISES, INC. (“MARC DANIEL”), formerly doing business as Buy Rite
11 Beauty Supply, Inc, (“Buy Rite”), was and is a “person” “in the course of doing business” with ten
12 (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

13 8. MARC DANIEL manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
15 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

3 **REGULATORY BACKGROUND AND LAW**

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

8 18. 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, “[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 19. 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” warning.
16 Health & Safety Code § 25249.6

17 20. 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...” 27
19 C.C.R. § 25600(h).

20 21. Under Proposition 65, persons violating the statute may be enjoined in any court of
21 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 22. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
24 California identified and listed DEHP as a chemical known to the State cause cancer, birth defects,
25 and reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements
26 one year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
27 §§ 25249.8, 25249.10(b).

1 **STATEMENT OF FACTS**

2 23. Plaintiff purchased DEFENDANTS' PRODUCTS in California without a warning.

3 24. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab,
4 and consulted with a person with relevant and appropriate knowledge and expertise, who, after
5 reviewing the collected data and analyzing the risk of exposure to DEHP, determined the
6 PRODUCTS subject consumers in California to the listed chemical at levels requiring a warning
7 under the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with
8 their reasonably foreseeable and intended usages.

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

10 26. 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 when it served the notice on the California Attorney General's
13 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

14 27. Thereafter, on July 1, 2020, plaintiff served a 60-Day Notice of Violation ("Notice"),
15 together with the certificate of merit, on Buy Rite, the California Attorney General's Office, and the
16 requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales of the
17 PRODUCTS, consumers in the State of California were, and are, being exposed to DEHP through as
18 their reasonably foreseeable use of the PRODUCTS as intended without first receiving a "clear and
19 reasonable warning," as required by Proposition 65.

20 28. Thereafter, on September 23, 2020, plaintiff filed a Supplemental 60-Day Notice of
21 Violation ("Supplemental Notice", and collectively, with Notice, the "Notices"), together with the
22 requisite certificate of merit, and served the Supplemental Notice on MARC DANIEL, Buy Rite, the
23 California Attorney General's Office, and the requisite public enforcement agencies, adding MARC
24 DANIEL as a Notice recipient and alleging, as a result of DEFENDANTS' sales of the PRODUCTS,
25 consumers in the State of California were and are being exposed to DEHP as a result of their
26 reasonably foreseeable use of the PRODUCTS, without first receiving a "clear and reasonable
27 warning," as is required by Proposition 65.

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

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

5. That the Court grant any further relief as it deems just and equitable.

Dated: March 3, 2021

Respectfully submitted,

SEVEN HILLS LLP



By: _____

Kimberly Gates Johnson
Attorneys for Plaintiff
Center for Advanced Public Awareness