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9 **ENDORSED
10 FILED
11 ALAMEDA COUNTY**

12 **JAN 20 2021**

13 CLERK OF THE SUPERIOR COURT
14 By *J. Thomas*
15 **JANIE THOMAS, Deputy**

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF ALAMEDA**

18 **ANTHONY FERREIRO,**

19 **Plaintiff,**

20 **vs.**

21 **HOUSE OF DOOLITTLE, LTD.,**

22 **Defendant.**

23 Case No.:

24 **RG21088145**

25 **COMPLAINT FOR CIVIL PENALTIES AND
26 INJUNCTIVE RELIEF**

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

1 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the following
2 cause of action in the public interest of the citizens of the State of California.

3 **BACKGROUND OF THE CASE**

4 1. Plaintiff brings this representative action on behalf of all California citizens to
5 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
6 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
7 "[n]o person in the course of doing business shall knowingly and intentionally expose any
8 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
9 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

10 2. This complaint is a representative action brought by Plaintiff in the public interest
11 of the citizens of the State of California to enforce the People's right to be informed of the health
12 hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in in House
13 of Doolittle desk calendars/planners and/or distributed by defendant House of Doolittle, Ltd.
14 ("House of Doolittle" or the "Defendant") in California.

1 3. DINP is a harmful chemical known to the State of California to cause cancer. On
2 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause
3 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
4 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

5 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
6 within California or sell products therein to comply with Proposition 65 regulations. Included in
7 such regulations is the requirement that businesses must label any product containing a Proposition
8 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
9 exposing any person to any such listed chemical.

10 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
11 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
12 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
13 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
14 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
15 25249.7.

16 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
17 without a requisite exposure warning, in House of Doolittle desk calendars/planners (the
18 “Products”) that expose persons to DINP.

19 7. Defendant’s failure to warn consumers and other individuals in California of the
20 health hazards associated with exposure to DINP in conjunction with the sale and/or distribution
21 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
22 penalties described herein.

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

25 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
26 Defendant to provide purchasers or users of the Products with required warnings related to the
27 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code
28 § 25249.7(a).

1 **PARTIES**

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

6 11. Defendant House of Doolittle, through its business, effectively imports, distributes,
7 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
8 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

9 12. Plaintiff alleges that defendant House of Doolittle is a “person” in the course of
10 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

11 **VENUE AND JURISDICTION**

12 13. Venue is proper in the County of Alameda because one or more of the instances of
13 wrongful conduct occurred, and continue to occur in this county and/or because Defendant
14 conducted, and continues to conduct, business in the County of Alameda with respect to the
15 Products.

16 14. This Court has jurisdiction over this action pursuant to California Constitution
17 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
18 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement
19 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
20 jurisdiction over this lawsuit.

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

27 **STATUTORY BACKGROUND**

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

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

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

10 18. An exposure to a chemical in a consumer product is one “which results from a
11 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
12 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
13 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
14 shall provide a warning to any person to whom the product is sold or transferred unless the product
15 is packaged or labeled with a clear and reasonable warning.”

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

18 a. A warning that appears on a product’s label or other labeling;

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

22 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
23 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
24 with such conspicuousness, as compared with other words, statements, designs, or devices
25

26
27 ¹ 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 in the label, labeling or display as to render it likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use; and/or

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

5 20. Proposition 65 provides that any “person who violates or threatens to violate” the
6 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
7 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
8 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
9 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
10 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

11 FACTUAL BACKGROUND

12 21. On December 20, 2013, the State of California listed DINP as a chemical known to
13 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
14 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
15 In summary, the Listed Chemical was listed under Proposition 65 as a chemical known to the State
16 to cause cancer.

17 22. The consumer exposures that are the subject of this Complaint result from through
18 dermal absorption. Users may potentially be exposed to DINP by dermal absorption through direct
19 skin contact with the Products during routine use when handled with bare hands. Finally, while
20 mouthing of the Products does not seem likely, some amount of exposure through ingestion can
21 occur by touching the Products with subsequent touching of the user’s hand to mouth.

22 23. Defendant has manufactured, processed, marketed, distributed, offered to sell
23 and/or sold the Products in California since at least November 23, 2020. The Products continue to
24 be distributed and sold in California without the requisite warning information.

25 24. At all times relevant to this action, Defendant has knowingly and intentionally
26 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
27 giving a clear and reasonable exposure warning to such individuals.

1 31. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
2 the Product.

3 32. The Products contain DINP, a hazardous chemical found on the Proposition 65 list
4 of chemicals known to be hazardous to human health.

5 33. The Product does not comply with the Proposition 65 warning requirements.

6 34. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since November 23, 2020, continuing until the present, that Defendant has
8 continued to knowingly and intentionally expose California users and consumers of the Product to
9 DINP without providing required warnings under Proposition 65.

10 35. The exposures that are the subject of the Notice result from the purchase,
11 acquisition, handling and recommended use of the Products. Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
13 DINP by dermal absorption through direct skin contact with the Products during routine use when
14 handled with bare hands. Finally, while mouthing of the Products does not seem likely, some
15 amount of exposure through ingestion can occur by touching the Products with subsequent
16 touching of the user's hand to mouth.

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

20 37. Defendant has knowledge that the normal and reasonably foreseeable use of the
21 Products exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
22 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
23 the Products to consumers in California

24 38. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
25 Complaint.

26 39. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
27 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.
28

