

1 **GLICK LAW GROUP, PC**
Noam Glick (SBN 251582)
2 225 Broadway, Suite 1900
San Diego, California 92101
3 Tel: (619) 382-3400
Email: noam@glicklawgroup.com
4

5 **NICHOLAS & TOMASEVIC, LLP**
Craig M. Nicholas (SBN 178444)
Jake W. Schulte (SBN 293777)
6 225 Broadway, Suite 1900
San Diego, California 92101
7 Tel: (619) 325-0492
Email: cnicholas@nicholaslaw.org
8 Email: jschulte@nicholaslaw.org
9

10 Attorneys for Plaintiff
ENVIRONMENTAL HEALTH ADVOCATES, INC.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF ALAMEDA**

13 ENVIRONMENTAL HEALTH ADVOCATES,
14 INC.,

15 Plaintiff,

16 v.

17 AMERICAN DREAM HOME GOODS, INC.,
a New Jersey corporation, BETTER HOME
18 PLASTICS CORP., a New Jersey corporation,
BROWN'S LINEN SHOPS, INC., a
19 Pennsylvania corporation, WALMART, INC.,
a Delaware corporation, and DOES 1 through
100, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
03/02/2022 at 11:58:46 AM

By: Xian-xii Bowie, Deputy Clerk

Case No.: **22CV007815**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Environmental Health Advocates,
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendants’ failure to inform the People of exposure to Di(2-ethylhexyl) phthalate
5 (“DEHP”), a known carcinogen. Defendants expose consumers to DEHP by manufacturing, importing,
6 selling, and/or distributing Dream Bath PVC Anti-Bacterial Mildew Resistant Shower Liner
7 (“Products”). Defendants know and intend that customers will use Products containing DEHP.

8 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
9 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
10 business shall knowingly and intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual. . . .” (Health & Safety Code, § 25249.6.)

13 3. California identified and listed DEHP as a chemical known to cause cancer as early as
14 January 1, 1988, and as a chemical known to cause developmental/reproductive toxicity on October 24,
15 2003.

16 4. Defendants failed to sufficiently warn consumers and individuals in California about
17 potential exposure to DEHP in connection with Defendants’ manufacture, import, sale, or distribution
18 of Products. This is a violation of Proposition 65.

19 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
20 in California before exposing them to DEHP in Products. (Health & Safety Code, § 25249.7(a).)
21 Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65 along with
22 attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

II.
PARTIES

23
24
25 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
26 corporation in the State of California dedicated to protecting the health of California citizens through
27 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
28 interest pursuant to Health and Safety Code, section 25249.7.

1 has jurisdiction.

2 13. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
3 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
4 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

5 12. Defendants have sufficient minimum contacts in the State of California or otherwise
6 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
7 be consistent with traditional notions of fair play and substantial justice.

8
9 **IV.**
CAUSES OF ACTION

10 **FIRST CAUSE OF ACTION**
11 **(Violation of Proposition 65 – Against all Defendants)**

12 14. Plaintiff incorporates by reference each and every allegation contained above.

13 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that
14 cause cancer, birth defects, and other reproductive harm.

15 16. Defendants manufactured, imported, sold, and/or distributed Products containing DEHP
16 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
17 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
18 future.

19 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
20 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
21 to DEHP through reasonably foreseeable use of the Products.

22 18. Products expose individuals to DEHP through dermal absorption, ingestion, and direct
23 inhalation. This exposure is a natural and foreseeable consequence of Defendants placing Products into
24 the stream of commerce. As such, Defendants intend that consumers will use Products, exposing them
25 to DEHP.

26 19. Defendants knew or should have known that the Products contained DEHP and exposed
27 individuals to DEHP in the ways provided above. The Notice informed Defendants of the presence of
28 DEHP in the Products. Likewise, media coverage concerning DEHP and related chemicals in consumer

1 products provided constructive notice to Defendants.

2 20. Defendants' actions in this regard were deliberate and not accidental.

3 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
4 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
5 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
6 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
7 California of the health hazards associated with exposures to DEHP contained in the Products.

8 22. The appropriate public enforcement agencies provided with the Notice failed to
9 commence and diligently prosecute a cause of action against Defendants.

10 23. Individuals exposed to DEHP contained in Products through dermal absorption,
11 ingestion, and direct inhalation resulting from reasonably foreseeable use of the Products have suffered
12 and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

13 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
14 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
15 appropriate pursuant to Health and Safety Code, section 25249.7(a).

16 *[Rest of page intentionally left blank.]*
17
18
19
20
21
22
23
24
25
26
27
28

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

3 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
4 damages total a minimum of \$1,000,000.00;

5 2. A preliminary and permanent injunction against Defendants from manufacturing,
6 importing, selling, and/or distributing Products in California without providing a clear and reasonable
7 warning as required by Proposition 65 and related Regulations;

8 3. Reasonable attorney’s fees and costs of suit; and

9 4. Such other and further relief as may be just and proper.

10 Respectfully submitted:

11 Dated: March 2, 2022

GLICK LAW GROUP, PC

12
13
14
15 By:



16 Noam Glick

17 **NICHOLAS & TOMASEVIC, LLP**

18 Craig M. Nicholas
19 Jake W. Schulte

20 Attorneys for Plaintiff
21 Environmental Health Advocates, Inc.
22
23
24
25
26
27
28