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COUNTY OF CONTRA COSTA, CA
BY: **D. WAGNER**
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7 CENTER FOR ADVANCED PUBLIC AWARENESS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA
10 UNLIMITED CIVIL JURISDICTION

12 CENTER FOR ADVANCED PUBLIC
13 AWARENESS,
14 Plaintiff,
15 v.
16 GARFIELD COMMERCIAL
17 ENTERPRISES, INC.; and DOES 1-30,
18 inclusive,
19 Defendants.

Case No. **C 21 - 02289**
**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

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 7, FOR ALL
PURPOSES.

SUMMONS ISSUED

BY FAX
NATIONWIDE LEGAL LLC
859 HARRISON STREET SF, CA 9410
415-351-0400

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

4 INTRODUCTION AND NATURE OF THE ACTION

5 1. This Complaint is a representative action brought by plaintiff CENTER FOR
6 ADVANCED PUBLIC AWARENESS in the public interest of the citizens of the State of California
7 to enforce the People’s right to be informed of the health hazards caused by exposures to diisononyl
8 phthalate (“**DINP**”), a toxic chemical found in and on seats with vinyl upholstery sold by defendants
9 in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
12 they are being exposed to substances known to the State of California to cause cancer through
13 exposures to DINP, present in and on seats with vinyl upholstery manufactured, distributed, sold and
14 otherwise offered for sale or use throughout the state of California by defendants.

15 3. Detectable levels of DINP are found in and on the seats with vinyl upholstery
16 defendants manufacture, sell or distribute for sale to individuals throughout the state of California.

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

22 5. CENTER FOR ADVANCED PUBLIC AWARENESS contends and alleges
23 defendants manufacture, distribute, sell, and offer for sale, in California, seats with vinyl upholstery
24 containing DINP without Proposition 65’s requisite health hazard warning about the presence of, and
25 the harms associated with exposures to DINP including, but not limited to, *Charlie Booster Seat,*
26 *CH03 BK UPHL, Item No. CHO3.C01* (collectively referred to hereinafter, the “**PRODUCTS**”).
27 Defendants’ conduct subjects them to civil penalties for each violation, as well an enjoinder and
28 preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

1 **PARTIES**

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

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

11 3. GARFIELD manufactures, distributes, sells, and/or offers the PRODUCTS for sale or
12 use in the state of California, or implies by its conduct that it manufactures, distributes, sells, and/or
13 offers the PRODUCTS for sale or use in the state of California.

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

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

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

1 DEFENDANTS conducted, and continue to conduct, business in the County of Contra Costa with
2 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 December 20, 2013, pursuant to Proposition 65, California identified and listed
24 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
25 warning” requirements one year later, on December 20, 2014. Cal. Code Regs. tit. 27, § 27001(c);
26 Health & Safety Code §§ 25249.8, 25249.10(b).

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 DINP, 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 March 12, 2021, plaintiff served a 60-Day Notice of Violation
15 (“Notice”), together with the requisite certificate of merit, on Garfield Commercial Enterprises, Inc.,
16 the California Attorney General’s Office, and the requisite public enforcement agencies, alleging
17 that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the state of California
18 were and are being exposed to DINP resulting from their reasonably foreseeable use of the
19 PRODUCTS 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. CENTER FOR ADVANCED PUBLIC AWARENESS realleges and incorporates by
26 reference, as if fully stated herein, the allegations set forth in Paragraphs 1 through 22, inclusive.

27 24. DEFENDANTS’ PRODUCTS contain DINP 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 distribute, sell, and offer for sale in California contain DINP. Plaintiff’s Notice also informed
3 DEFENDANTS of the presence of DINP in the PRODUCTS.

4 26. The PRODUCTS that DEFENDANTS manufacture, distribute, sell, and offer for sale
5 or use in the state of California cause exposures to DINP, as a result of the reasonably foreseeable use
6 of 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 DINP.

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

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

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

17 31. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
18 and other individuals in the state of California who have been, or who will be, exposed to DINP
19 through dermal 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 DINP 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, distribute, sell, and offer the PRODUCTS for sale or
26 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.

