

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Daniel Crowley

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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF LOS ANGELES**

21 **PUBLIC HEALTH AND SAFETY**
22 **ADVOCATES, LLC., a Limited Liability**
23 **Company, in the public interest,**
24 **Plaintiff,**

25 v.

26 **BEST BRANDS SALES COMPANY, LLC,**
27 **THE WALT DISNEY COMPANY, DISNEY**
28 **ENTERPRISES, INC., DISNEY CONSUMER**
PRODUCTS, INC., and DOES 1 through 50,
inclusive,
Defendant(s)

CASE NO.: 21STCV41274

**COMPLAINT FOR PENALTY AND
INJUNCTION**

**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, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** alleges one (1) cause of
2 action against Defendants, **BEST BRANDS SALES COMPANY, LLC, THE WALT DISNEY**
3 **COMPANY, DISNEY ENTERPRISES, INC., DISNEY CONSUMER PRODUCTS, INC.** and
4 DOES 1 through 50, inclusive as follows:

5 **THE PARTIES**

6 **1.** Plaintiff, **PUBLIC HEALTH AND SAFETY ADVOCATES, LLC.** (“PHSA” or
7 “Plaintiff”) is an organization qualified to do business in the state of California. PHSA is a person within
8 the meaning of *Health & Safety Code §25249.11(a)*, and is dedicated to protecting the public from
9 environmental health hazards and toxic exposures. PHSA, acting as a private attorney general, brings
10 this enforcement action in the public interest pursuant to *Health & Safety Code §25249.7(d)*.

11 **2.** Defendant, **BEST BRANDS SALES COMPANY, LLC.** is a New York corporation
12 with its headquarters and principal place of business in the state of New York. Upon information and
13 belief, Plaintiff contends that the Defendant has conducted business within California at all relevant
14 times herein.

15 **3.** Defendant, **THE WALT DISNEY COMPANY** is a Delaware corporation with its
16 headquarters and principal place of business in the state of California. Defendant is qualified to do
17 business in California. Upon information and belief, Plaintiff contends that the Defendant has conducted
18 business within California at all relevant times herein.

19 **4.** Defendant, **DISNEY ENTERPRISES, INC.** is a Delaware corporation with its
20 headquarters and principal place of business in the state of California. Defendant is qualified to do
21 business in California. Upon information and belief, Plaintiff contends that the Defendant has conducted
22 business within California at all relevant times herein.

23 **5.** Defendant, **DISNEY CONSUMER PRODUCTS, INC.** is a California corporation
24 qualified to do business in California. Upon information and belief, Plaintiff contends that the Defendant
25 has conducted business within California at all relevant times herein.

26 **6.** Upon information and belief, Plaintiff contends that **BEST BRANDS SALES**
27 **COMPANY, LLC, THE WALT DISNEY COMPANY, DISNEY ENTERPRISES, INC., and**
28

1 **DISNEY CONSUMER PRODUCTS, INC.** (hereinafter, “Defendants”) own and/ or operate several
2 retail locations in the California area, where they distribute products into the stream of commerce.
3 Defendants have conducted business within California at all relevant times herein.

4
5 7. Plaintiff is presently unaware of the true names and capacities of Defendants, DOES 1
6 through 50, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
7 Complaint to allege the true names and capacities of said Defendants when the identities are ascertained.
8 Plaintiff is informed, believes and thereon alleges that each fictitiously named Defendant is responsible
9 in some manner for the occurrences herein alleged and the damages caused.

10 8. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
11 times mentioned herein have conducted business within the state of California.

12 9. Defendants own, administer, direct, control, sell, distribute, and/or operate facilities that
13 place products into the stream of commerce in California. The product is outlined herein: (1) Star Wars
14 Mandalorian Hand Sanitizer – Set of 3; The Child (Baby Yoda), Individual UPC 042887438798,
15 Package UPC 042887700451 (hereinafter, “PRODUCT”). Due to chemicals in the PRODUCT, the
16 Defendants are required to provide “clear and reasonable” warnings to consumers about the chemicals
17 under Proposition 65.

18 10. At all times mentioned herein, Defendants were legally responsible for compliance with
19 the provisions of Proposition 65. Whenever an allegation regarding any act of any Defendant is made
20 herein, such allegation shall be deemed to mean that Defendants, or its agents, officers, directors,
21 managers, supervisors, or employees, did or so authorize such acts while engaged in the affairs of
22 Defendants business operations and/or while acting within the course and scope of employment.

23
24 11. Upon information and belief, at all relevant times to this action, each of the Defendants,
25 including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In
26 conducting the activities alleged in this Complaint, each of the Defendants was acting within the course
27 and scope of this agency, service, or employment, and was acting with the consent, permission, and
28 authorization of each of the other Defendants. All actions of each of the Defendants alleged in this
Complaint were ratified and approved by every other Defendant or their officers or managing agents,

1 and/or negligently failed and omitted to act or adequately and properly supervise, control, or direct its
2 employees and agents while engaged in the management, direction, operation, or control of the affairs of
3 the business organizations. Alternatively, each of the Defendants aided, conspired with and/or
4 facilitated the alleged wrongful conduct of each of the other Defendants.
5

6 **12.** Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
7 Defendants was a person doing business within the meaning of *Health & Safety Code §25249.11(b)*, and
8 that each of the Defendants had ten (10) or more employees at all relevant times.

9 **JURISDICTION**

10 **13.** This Court has jurisdiction over this action pursuant to *California Constitution,*
11 *Article VI, Section 10*, which grants the Superior Court original jurisdiction in all causes except
12 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant to
13 *Health and Safety Code Section 25249.7*, which allows enforcement of violations of Proposition 65
14 in any Court of competent jurisdiction.

15 **14.** This Court has jurisdiction over Defendants named herein because Defendants either
16 reside in California, are located in California, are foreign corporations authorized to do business in
17 California, are registered with the California Secretary of State, do sufficient business in California,
18 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of
19 the markets within California through their manufacture, distribution, promotion, marketing, or sale
20 of their products within California to render the exercise of jurisdiction by the California courts
21 permissible under traditional notions of fair play and substantial justice.

22 **15.** Venue is proper in the County of Los Angeles because one or more of the instances
23 of wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
24 because the Defendants conducted, and continue to conduct business in the County of Los Angeles
25 with respect to the consumer PRODUCT that is the subject of this action. Said PRODUCT is
26 marketed, offered for sale, sold, used, and/or consumed without clear and reasonable warnings in
27 the County of Los Angeles.
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1 **BACKGROUND AND PRELIMINARY FACTS**

2 **16.** In 1986, California voters approved an initiative to address growing concerns about
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to chemicals
4 that cause cancer, birth defects, or other reproductive harm.” *Ballot Pamphlet, Proposed Law,*
5 *Gen. Election (Nov.4, 1986) at p.3.* The initiative, the Safe Drinking Water and Toxic Enforcement
6 Act of 1986, codified at *Health & Safety Code § 25249.5, et seq.* (“Proposition 65”), helps to
7 protect California’s drinking water sources from contamination, to allow consumers to make
8 informed choices about the products they buy, and to enable persons to protect themselves from
9 toxic chemicals as they see fit.
10

11 **17.** Proposition 65 requires the Governor of California to publish a list of chemicals
12 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
13 *§ 25249.8.* The list, which the Governor updates at least once a year, contains over 700 chemicals
14 and chemical families. Proposition 65 imposes warning requirements and other controls that apply
15 to Proposition 65-listed chemicals.

16 **18.** All businesses with ten (10) or more employees that operate or sell products in
17 California must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking water (*Health*
19 *& Safety Code, § 25249.5*) and (2) required to provide “clear and reasonable” warnings before
20 knowingly and/ or intentionally exposing a person to a proposition 65-listed chemical (*Health &*
21 *Safety Code, § 25249.6*).

22 **19.** Proposition 65 provides that any person “violating or threatening to violate” the
23 statute may be enjoined in a court of competent jurisdiction. *Health & Safety Code § 25249.7.*
24 “Threaten to violate” means “to create a condition in which there is a substantial probability that a
25 violation will occur.” *Id., § 25249.11 (e).* Defendants are also liable for civil penalties of up to
26 \$2,500.00 per day per violation, recoverable in a civil action. *Id., § 25249.7 (b).*
27

28 **20.** Plaintiff identified certain practices of manufacturers and distributors of various
hand sanitizer products, who both in the past and presently, knowingly and intentionally expose,

1 persons in California to Benzene and Benzene Compounds (“Benzene”) in such products without
2 first providing clear and reasonable warnings of such to the exposed persons prior to the time of
3 exposure. Plaintiff later discerned that Defendants engaged in such practice.

4 **21.** On February 27, 1987, the Governor of California added Benzene to the list of
5 chemicals known to the State to cause cancer. *Cal. Code Regs. Tit. 27, §27001 (c)*. Benzene is
6 known to cause cancer. The Proposition 65 warning requirements and discharge prohibitions
7 became applicable to Benzene within twenty (20) months after Benzene was added to the list of
8 chemicals known to cause cancer. *Health & Safety Code §§ 25249.9 and 25249.10*.

9 **22.** December 26, 1997, the Governor of California added Benzene to the list of
10 chemicals known to the State to cause developmental and reproductive toxicity. *Cal. Code Regs.*
11 *Tit. 27, §27001 (c)*. Benzene is known to cause developmental in both males and females, and
12 reproductive toxicity in males. The Proposition 65 warning requirements and discharge
13 prohibitions became applicable to Benzene within twenty (20) months after Benzene was added to
14 the list of chemicals known to cause developmental and reproductive toxicity. *Health & Safety*
15 *Code §§ 25249.9 and 25249.10*.

16 **23.** The level of exposure to a chemical causing cancer, or reproductive toxicity under
17 Proposition 65 is determined by multiplying the level in question times the reasonably anticipated
18 rate of exposure for an individual to a given medium. *27 C.C.R. § 25821(b)*. For exposure to
19 consumer products, the level of exposure is calculated using the reasonably anticipated rate of
20 intake or exposure for average users of the consumer product. *27 C.C.R. § 25821(C)(2)*.

21 **24.** Defendants' manufacture and distribute PRODUCT which contains sufficient
22 quantities of Benzene such that consumers, including pregnant women, who dermally absorb,
23 ingest via hand-to-mouth contact, or inhale airborne particles of the Products are exposed to
24 Benzene. The primary route of exposure for the violations happens when consumers apply
25 PRODUCT to their hands, and absorb the chemical. These exposures occur in homes, workplaces
26 and everywhere in California where the Products are used.

27 **25.** During the relevant one-year period herein, no clear and reasonable warning was
28

1 provided to consumers when the PRODUCT was manufactured and released into the stream of
2 commerce to warn consumers about the possible exposure to cancer, developmental or reproductive
3 hazards from Benzene when the Products are consumed.

4 **NOTICE OF VIOLATION**

5 **26.** At all times relevant to this action, the Defendants have knowingly and intentionally
6 exposed the users/consumers of the PRODUCT to Benzene by recommended that consumers apply
7 the PRODUCT without first giving a clear and reasonable warning to such individuals.

8 **27.** The Defendants have sold the PRODUCT to consumers in California at least since
9 June 25, 2018. The PRODUCT continue to be imported, distributed and sold in California without
10 the requisite warning information. Consumers are exposed to Benzene when the PRODUCT are
11 used.

12 **28.** On or about June 25, 2021, Plaintiff gave notice (“Notice”) of the alleged violations
13 of *Health & Safety Code §25249.6* for the PRODUCT to Defendants, the California Attorney
14 General, the District Attorney for each county in California and the City Attorney for San
15 Francisco, San Diego, San Jose, Sacramento and Los Angeles. In compliance with *Health and*
16 *Safety Code §25249.7(d)* and *27 C.C.R. Code §25903(b)*, each Notice included the following
17 information: the name, address, and telephone of the noticing party; the name of the alleged
18 violator; the statute violated; the approximate time period during which violations occurred; and
19 descriptions of the violations including the chemicals involved, the routes of toxic exposure, and
20 the specific product or type of product causing the violations.

21 **29.** Before sending the Notice of alleged violations, Plaintiff investigated the
22 PRODUCT to determine the likelihood that such PRODUCT would cause consumers to sustain
23 significant exposures to Benzene. Plaintiff hired a well-respected and accredited testing laboratory
24 to test the Products. This laboratory uses testing protocols established and approved by the
25 California Attorney General.

26 **30.** Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
27 General, the District Attorneys of every county in California, the City Attorneys of every city in
28

1 California with a population greater than 750,000 and to the named Defendants. In compliance with
2 *Health & Safety Code* § 2521-9.7(d) and *11 C.C.R. § 3101*, each Certificate certified that Plaintiffs’
3 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
4 expertise who reviewed facts, studies or other data regarding the exposures to Benzene alleged in
5 each Notice; and (2) based on the information obtained through such consultations, believes that
6 there is a reasonable and meritorious case for a citizen enforcement action based on the facts
7 alleged in each Notice.
8

9 **31.** In reliance on the expert’s evaluation of the PRODUCT, Plaintiffs’ counsel is
10 informed and believes and thereon alleges that there is a reasonable and meritorious case against
11 Defendants for this private action.

12 **32.** Any person acting in the public interest has standing to enforce violations of
13 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
14 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
15 within such time. *Health & Safety Code* § 25249.7(d)

16 **33.** Plaintiff’s notice of alleged violations also included a Certificate of Service and a
17 document entitled “The Safe Drinking Water & Toxic Enforcement Act of 1986: A Summary”
18 *Health & Safety Code* § 25249.7(d)

19 **34.** Plaintiff is commencing this action more than sixty (60) days from the date Plaintiff
20 gave notice of the alleged violations to Defendants and the public prosecutor outlined above.

21 **35.** Plaintiff is informed, believes and thereon alleges that none of the public
22 prosecutors with the authority to prosecute violations of Proposition 65 has commenced or is
23 diligently prosecuting an action against the Defendants under *Health and Safety Code section*
24 *25249.5, et seq.* based on the allegations herein.

25 **36.** Plaintiff has engaged in good faith efforts to resolve the alleged violation prior to
26 filing this Complaint.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of Proposition 65, The Sate Drinking Water and Toxic Enforcement Act of 1986**
3 **(Health & Safety Code §25249.5, et seq.)**

4 37. Plaintiff incorporates by reference paragraphs 1 through 36 of this Complaint as
5 though fully set forth herein.

6 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
7 importer, distributor, wholesaler, promoter, or retailer of PRODUCT.

8 39. The PRODUCT contains Benzene.

9 40. Defendants knew or should have known that Benzene has been identified by the
10 State of California as chemicals known to cause cancer and reproductive toxicity and were
11 therefore subject to Proposition 65 warnings requirement. Defendants were also informed of the
12 presence of Benzene in PRODUCT, and the Proposition 65 violations when the Plaintiff served
13 Notice to Defendants on June 25, 2021.

14 41. The allegations surrounding the PRODUCT involves “[c]onsumer products
15 exposure[s]” which “is an exposure that results from a person’s acquisition, purchase, storage,
16 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results
17 from receiving a consumer service.” *Cal. Code Regs. Tit.27 § 25602 (b)*. The PRODUCT is a
18 consumer product, and as mentioned herein, exposures to Benzene took place as a result of such
19 normal and foreseeable consumption and use.
20

21 42. Plaintiff is informed, believes, and thereon alleges that at least since June 25, 2018
22 and the present, each of the Defendants knowingly and intentionally exposed California consumers
23 and users of the PRODUCT to Benzene. Plaintiff is informed, believes, and thereon alleges that
24 Defendants manufactured, distributed, or sold the PRODUCT without first providing any type of
25 clear and reasonable warning of such to the exposed persons before the time of exposure.
26 Defendants know and intend that California consumers will use the PRODUCT, thereby exposing
27 them to Benzene. Therefore, Defendants violated Proposition 65.
28

1 4. Such other and further relief that the Court may deem just and equitable.
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5 DATED: 11/09/2021

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12 BY: 
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14 **LAW OFFICES OF DANIALPOUR &
15 ASSOCIATES**
16 Davar Danialpour, Esq.
17 Attorneys for Plaintiffs,
18 PUBLIC HEALTH & SAFETY ADVOCATES,
19 LLC.

20
21
22 DATED: 11/09/2021

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