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8 Attorneys for Plaintiff,

9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 CONSUMER ADVOCACY GROUP, INC.,
13 in the public interest,

14 Plaintiff,

15 v.

16 INTERDESIGN, INC., an Ohio Corporation;
17 BED BATH & BEYOND INC., a New York
18 Corporation;

19 BED BATH & BEYOND OF CALIFORNIA
20 LLC, a Delaware Limited Liability
21 Company;
22 and DOES 1-10,

23 Defendants.

CASE NO. **23STCV07146**

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.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges one cause of action against
25 defendants INTERDESIGN, INC.; BED BATH & BEYOND INC.; BED BATH & BEYOND
26 OF CALIFORNIA LLC, and DOES 1-10 as follows:

27 **THE PARTIES**

- 1 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
2 organization qualified to do business in the State of California. CAG is a person within
3 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
4 as a private attorney general, brings this action in the public interest as defined under
5 Health and Safety Code Section 25249.7, subdivision (d).
- 6 2. Defendant INTERDESIGN, INC. (“INTERDESIGN”) is an Ohio Corporation qualified
7 to do business in Ohio, and doing business in the State of California at all relevant times
8 herein.
- 9 3. Defendant BED BATH & BEYOND INC. (“BED BATH INC”) is a New York
10 Corporation, qualified to do business in California and doing business in the State of
11 California at all relevant times herein.
- 12 4. Defendant BED BATH & BEYOND OF CALIFORNIA LLC (“BED BATH LLC”) is a
13 Delaware Limited Liability Company, qualified to do business in California and doing
14 business in the State of California at all relevant times herein.
- 15 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
16 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
17 Complaint to allege their true names and capacities when ascertained. Plaintiff is
18 informed, believes, and thereon alleges that each fictitiously named defendant is
19 responsible in some manner for the occurrences herein alleged and the damages caused
20 thereby.
- 21 6. At all times mentioned herein, the term “Defendants” includes INTERDESIGN, BED
22 BATH INC, BED BATH LLC, and DOES 1-10.
- 23 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
24 times mentioned herein have conducted business within the State of California.
- 25 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
26 including DOES 1-10, was an agent, servant, or employee of each of the other
27 Defendants. In conducting the activities alleged in this Complaint, each of the
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1 Defendants was acting within the course and scope of this agency, service, or
2 employment, and was acting with the consent, permission, and authorization of each of
3 the other Defendants. All actions of each of the Defendants alleged in this Complaint
4 were ratified and approved by every other Defendant or their officers or managing
5 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
6 alleged wrongful conduct of each of the other Defendants.

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

11 **JURISDICTION**

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

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

25 12. Venue is proper in the County of Los Angeles because one or more of the instances of
26 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
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1 because Defendants conducted, and continue to conduct, business in the County of Los
2 Angeles with respect to the consumer product that is the subject of this action.

3 **BACKGROUND AND PRELIMINARY FACTS**

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

13 14. Proposition 65 requires the Governor of California to publish a list of chemicals known
14 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
15 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
16 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
17 other controls that apply to Proposition 65-listed chemicals.

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

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
26 25249.7. "Threaten to violate" means "to create a condition in which there is a
27 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 17. Plaintiff identified certain practices of manufacturers and distributors of Fridge Freezer
4 Labels of exposing, knowingly and intentionally, persons in California to Diethyl Hexyl
5 Phthalate and Bis (2-ethylhexyl) phthalate, of such products without first providing clear
6 and reasonable warnings of such to the exposed persons prior to the time of exposure.

7 Plaintiff later discerned that Defendants engaged in such practice.

8 18. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate and Bis
9 (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause
10 cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October 24, 2003, the Governor
11 added DEHP to the list of chemicals known to the State to cause developmental male
12 reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and
13 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP
14 to the list of chemicals known to the State to cause reproductive toxicity, DEHP became
15 fully subject to Proposition 65 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 19. Plaintiff served the following notices for alleged violations of Health and Safety Code
18 Section 25249.6, concerning consumer products exposures:

19 a. On or about December 23, 2021, Plaintiff gave notice of alleged violations of
20 Health and Safety Code Section 25249.6, concerning consumer products
21 exposures subject to a private action to INTERDESIGN, BED BATH INC, and
22 to the California Attorney General, County District Attorneys, and City
23 Attorneys for each city containing a population of at least 750,000 people in
24 whose jurisdictions the violations allegedly occurred, concerning the Fridge
25 Freezer Labels.

26 b. On or about December 8, 2022, Plaintiff gave notice of alleged violations of
27 Health and Safety Code Section 25249.6, concerning consumer products

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1 exposures subject to a private action to INTERDESIGN, BED BATH INC, BED
2 BATH LLC, and to the California Attorney General, County District Attorneys,
3 and City Attorneys for each city containing a population of at least 750,000
4 people in whose jurisdictions the violations allegedly occurred, concerning the
5 Fridge Freezer Labels.

6 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer
7 products involved, the likelihood that such products would cause users to suffer
8 significant exposures to DEHP, and the corporate structure of each of the Defendants.

9 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
10 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
11 Plaintiff who executed the certificate had consulted with at least one person with relevant
12 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
13 subject Proposition 65-listed chemical of this action. Based on that information, the
14 attorney for Plaintiff who executed the Certificate of Merit believed there was a
15 reasonable and meritorious case for this private action. The attorney for Plaintiff
16 attached to the Certificate of Merit served on the Attorney General the confidential
17 factual information sufficient to establish the basis of the Certificate of Merit.

18 22. Plaintiff's notice of alleged violations also included a Certificate of Service and a
19 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
20 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

21 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notice of the alleged violations to INTERDESIGN, BED BATH INC, BED BATH
23 LLC, and the public prosecutors referenced in Paragraph 19.

24 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
25 any applicable district attorney or city attorney has commenced and is diligently
26 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against INTERDESIGN, BED**
3 **BATH INC, BED BATH LLC, and DOES 1-10 for Violations of Proposition 65,**
4 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety***
5 ***Code, §§ 25249.5, et seq.))***

6 **Home Accessories**

7 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint
8 as though fully set forth herein.

9 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Fridge Freezer Labels, including but not limited to
11 "iDesign Fridge/Freezer Labels"; "Etiquettes Pour Refrigerateur et Congelateur"; "36
12 Assorted Clear Labels"; "36 Etiquettes; 3 in x 1.25 in"; "7.6 cm x 3.2 cm"; "UPC
13 081492044345"; "Made in China"; "Fabrique en Chine"; "Hecho en China"; "Hergestellt
14 in China"; "Fabricado na China".

15 27. Fridge Freezer Labels contains DEHP.

16 28. Defendants knew or should have known that DEHP has been identified by the State of
17 California as a chemical known to cause cancer, and reproductive toxicity and therefore
18 was subject to Proposition 65 warning requirements. Defendants were also informed of
19 the presence of DEHP in Fridge Freezer Labels within Plaintiff's notice of alleged
20 violations further discussed above at Paragraph 19.

21 29. Plaintiff's allegations regarding Fridge Freezer Labels concerns "[c]onsumer products
22 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
23 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
24 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
25 *25602(b)*. Fridge Freezer Labels are consumer products, and, as mentioned herein,
26 exposures to DEHP took place as a result of such normal and foreseeable consumption
27 and use.

28 30. Plaintiff is informed, believes, and thereon alleges that between December 23, 2018 and
the present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of Fridge Freezer Labels, which Defendants manufactured,
2 distributed, or sold as mentioned above, to DEHP, without first providing any type of
3 clear and reasonable warning of such to the exposed persons before the time of exposure.
4 Defendants have distributed and sold Fridge Freezer Labels in California. Defendants
5 know and intend that California consumers will use and consume Fridge Freezer Labels,
6 thereby exposing them to DEHP. Further, Plaintiff is informed, believes, and thereon
7 alleges that Defendants are selling Fridge Freezer Labels under a brand or trademark that
8 is owned or licensed by the Defendants or an entity affiliated thereto; have knowingly
9 introduced DEHP into product or knowingly caused DEHP to be created in Fridge
10 Freezer Labels; have covered, obscured or altered a warning label that has been affixed
11 to Fridge Freezer Labels by the manufacturer, producer, packager, importer, supplier or
12 distributor of Fridge Freezer Labels; have received a notice and warning materials for
13 exposure from Fridge Freezer Labels without conspicuously posting or displaying the
14 warning materials; and/or have actual knowledge of potential exposure to DEHP from
15 Fridge Freezer Labels. Defendants thereby violated Proposition 65.

16 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
17 Persons sustain exposures by handling Fridge Freezer Labels without wearing gloves or
18 any other personal protective equipment, or by touching bare skin or mucous membranes
19 with gloves after handling Fridge Freezer Labels, as well as through direct and indirect
20 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter
21 dispersed from Fridge Freezer Labels.

22 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
23 Proposition 65 as to Fridge Freezer Labels have been ongoing and continuous, as
24 Defendants engaged and continue to engage in conduct which violates Health and Safety
25 Code Section 25249.6, including the manufacture, distribution, promotion, and sale of
26 Fridge Freezer Labels, so that a separate and distinct violation of Proposition 65 occurred
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1 each and every time a person was exposed to DEHP by Fridge Freezer Labels as
2 mentioned herein.

3 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
4 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
5 violations alleged herein will continue to occur into the future.

6 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DEHP from Fridge Freezer Labels,
8 pursuant to Health and Safety Code Section 25249.7(b).

9 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

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12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

14 36. A permanent injunction mandating Proposition 65-compliant warnings;

15 37. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);

16 38. Costs of suit;

17 39. Reasonable attorney fees and costs; and

18 40. Any further relief that the court may deem just and equitable.

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20 Dated: March 31, 2023

YEROUSHALMI & YEROUSHALMI*

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22
23 /s/ Reuben Yeroushalmi

24 Reuben Yeroushalmi
25 Attorneys for Plaintiff,
26 CONSUMER ADVOCACY GROUP, INC.
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