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Electronically FILED by Superior Court of California, County of Los Angeles on 11/04/2021 11:47 AM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Perez, Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company,)
11)
12 Plaintiff,)
13 v.)
14 DD'S DISCOUNTS, INC., a corporation,)
15 ROSS STORES, INC., a corporation, and)
16 DOES 1 through 100, inclusive,)
17 Defendants.)

CASE NO. 21STCV40655

**PLAINTIFF'S COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:
Dept.:
Compl. Filed:

Unlimited Jurisdiction

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INTRODUCTION

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2 1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public
3 interest of the citizens of the State of California, a representative action to enforce the People’s
4 right to be informed of the presence of Di (2-ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl
5 Phthalate (“DBP”, and collectively with DEHP, the “Listed Chemicals”), chemicals known to
6 the State of California to cause cancer and/or reproductive toxicity (including birth defects and
7 other reproductive harm), found in DD’s Discounts Hand Transplanter #6-82824-70227-0 sold
8 by Defendants.

9 2. The purpose of this Complaint is to remedy Defendants’ continuing failure to
10 warn California residents about the risk of exposure to the Listed Chemicals in the DD’s
11 Discounts Hand Transplanter #6-82824-70227-0 manufactured, distributed, sold, and/or offered
12 for sale to consumers in California.

13 3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
14 the DD’s Discounts Hand Transplanter #6-82824-70227-0. The products described in this
15 paragraph shall hereinafter be referred to as the “Products”.

16 4. Children and adults are exposed to the Listed Chemicals when they use, touch,
17 handle, play with, repair, maintain, or install the Products.

18 5. Hazardous levels of the Listed Chemicals are found in the accessible surface areas
19 of the Products manufactured, distributed, sold, and/or offered for sale by Defendants to
20 consumers in California.

21 6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)
22 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and
23 intentionally expose any individual to a chemical known to the state to cause cancer or
24 reproductive toxicity without first giving clear and reasonable warning to such individual...”

25 7. Studies repeatedly conclude that exposure to the Listed Chemicals is hazardous to
26 the health of children and adults. Accordingly, California has listed DEHP as a chemical known
27 to the state to cause cancer and reproductive toxicity, and DBP as known to cause birth defects
28 and other reproductive harm, and therefore each chemical subject to Proposition 65 warning

1 requirements.

2 8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
3 the Products without the required warnings. Defendants' conduct violates the warning
4 requirements of Proposition 65.

5 **PARTIES**

6 9. Plaintiff is an organization based in California acting in the public interest.
7 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code
8 section 25249.7(d).

9 10. Defendant, DD'S DISCOUNTS, INC. is a person in the course of doing business
10 within the meaning of California Health and Safety Code section 25249.11. DD'S DISCOUNTS,
11 INC. manufactures, distributes, and/or sells the Products for sale and use in California.

12 11. Defendant, ROSS STORES, INC. is a person in the course of doing business
13 within the meaning of California Health and Safety Code section 25249.11. ROSS STORES,
14 INC. manufactures, distributes, and/or sells the Products for sale and use in California.

15 12. DOES 1 through 100 are each a person in the course of doing business within the
16 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100
17 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of
18 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,
19 Plaintiff's Complaint shall be amended to reflect their true names.

20 13. The defendants identified in paragraphs 10-12 shall collectively be referred to
21 herein as "Defendants".

22 **JURISDICTION AND VENUE**

23 14. This Court has jurisdiction over this action pursuant to California Health and
24 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,
25 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a
26 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited
27 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent
28 injunctive relief.

1 15. This Court has jurisdiction over Defendants because each is a person, firm,
2 corporation, or association with sufficient minimum contacts in the State of California, or
3 otherwise purposefully avails itself to the California market as to render jurisdiction by the
4 California courts consistent with traditional notions of fair play and substantial justice.

5 16. Venue is proper in Los Angeles County Superior Court because one or more
6 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,
7 and/or because Defendants conducted, and continue to conduct, business in this County with
8 respect to the Products.

9 **FIRST CAUSE OF ACTION**

10 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

11 17. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 16, inclusive.

13 18. On August 24, 2021, Plaintiff served a sixty-day notice of violation (the
14 “Notice”), along with a Certificate of Merit, to DD’S DISCOUNTS, INC., ROSS STORES,
15 INC., and the various public enforcement agencies with respect to the Proposition 65 violations
16 related to Listed Chemicals in the Products. In addition, on said date, in compliance with Health
17 & Safety Code section 25249.7(d), confidential factual information sufficient to establish the
18 basis for the Certificate of Merit was provided to the California Attorney General.

19 19. None of the public prosecutors with the authority to prosecute Proposition 65
20 violations has commenced and/or is diligently prosecuting the causes of action against
21 Defendants based on the claims asserted in Plaintiff’s Notice.

22 20. By placing the Products into the stream of commerce, each Defendant is a person
23 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

24 21. Defendants knew and intended that consumers, including children, will use,
25 touch, handle, play with, repair, maintain, or install the Products.

26 22. Defendants knew that the Products contain the Listed Chemicals. Defendants,
27 who are in the business of marketing home goods, also should have known or have constructive
28 knowledge that the Products contain the Listed Chemicals from widespread media coverage

1 and/or other channels of information concerning the presence of the Listed Chemicals in similar
2 materials.

3 23. DEHP is a chemical listed by the State of California as known to cause cancer and
4 reproductive toxicity. DBP is listed by the State of California as known to cause birth defects and
5 other reproductive harm.

6 24. Defendants' Products contain sufficient quantities of the Listed Chemicals such
7 that consumers, including children, who use, touch, handle, play with, repair, maintain, or install
8 the Products are exposed to unsafe levels of Listed Chemicals. Listed Chemicals is present in the
9 Products in such a way as to expose individuals to Listed Chemicals, as exposure is defined by
10 27 CCR section 25600.1(e): "...that results from a person's acquisition, purchase, storage,
11 consumption, or any reasonably foreseeable use of a consumer good..." Exposure occurs
12 through inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the
13 Products.

14 25. Defendants knew or should have known that the reasonably foreseeable use of the
15 Products exposes individuals to the Listed Chemicals through inhalation, ingestion and/or dermal
16 contact.

17 26. Defendants failed to provide a "clear and reasonable warning" to individuals in
18 the State of California who were or could become exposed to Listed Chemicals during the
19 reasonably foreseeable use of the Products.

20 27. By committing the acts alleged in this Complaint, Defendants have violated
21 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally
22 exposing individuals to the Listed Chemicals without first giving clear and reasonable warnings
23 to such individuals regarding the toxicity of the Listed Chemicals.

24 28. As a result of Defendants' wrongful conduct, individuals in the State of California
25 have been exposed to the Listed Chemicals through the inhalation, ingestion and/or dermal
26 contact during the reasonably foreseeable use of the Products without a "clear and reasonable
27 warning", and have suffered and continue to suffer harm, each and every day since at least
28 August 24, 2018.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

3 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),
4 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation
5 alleged herein;

6 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering
8 the Products for sale in California without providing “clear and reasonable warnings” as defined
9 by 27 CCR section 25601;


10 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
11 order Defendants to take action to stop ongoing unwarned exposures to the Listed Chemicals
12 resulting from use of Products sold by Defendants;

13 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or
14 any other applicable theory, grant Plaintiff’s reasonable attorneys’ fees and costs of suit; and

15 5. Such other and further relief as may be just and proper.
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17 Dated: November 4, 2021

LAW OFFICES OF LUCAS T. NOVAK

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19 By: 
20 LUCAS T. NOVAK
21 Attorney for Plaintiff, APS&EE, LLC
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