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County of San Francisco

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Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 BED BATH & BEYOND, INC.,

15 Defendant.

Case No.:

CGC-22-600554

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

16 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
17 of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
22 “[n]o person in the course of doing business shall knowingly and intentionally expose any
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
24 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and/or Di-isodecyl phthalate
28 (DIDP), toxic chemicals found in products sold and/or distributed by defendant Bed Bath &
Beyond, Inc. (“Bed Bath & Beyond” or “Defendant”) in California.

1 3. DEHP is a harmful chemical known to the State of California to cause cancer and
2 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known
3 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since
4 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
5 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
6 reproductive toxicity.

7 4. DIDP is a harmful chemical known to the State of California to cause
8 developmental defects. On April 20, 2007, the State of California listed DIDP as a chemical known
9 to the State to cause developmental defects and DIDP has come under the purview of Proposition
10 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
11 25249.8 & 25249.10(b).

12 5. Proposition 65 requires all businesses with ten (10) or more employees that operate
13 within California or sell products therein to comply with Proposition 65 regulations. Included in
14 such regulations is the requirement that businesses must label any product containing a Proposition
15 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
16 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
17 chemical.

18 6. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
19 for up to 365 days to be imposed upon defendants in a civil action for violations of Proposition 65.
20 Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent
21 jurisdiction to enjoin the actions of a defendant which “violate or threaten to violate” the statute.
22 Health & Safety Code § 25249.7.

23 7. Plaintiff alleges that Defendant distributes, sells and/or offers for sale in California,
24 without a requisite exposure warning, (a) Face Values Handpicked Summer Necessities
25 bag/tote/kits, (b) BIOS living Page Magnifiers, (c) Foster & Rye Canvas Grilling Apron, (d)
26 Monarch Specialties magazine racks, and (e) Goldbug Portable Changing Pads, (collectively, the
27 “Products”) that expose persons to Proposition 65 DIDP and/or DEHP when used for their
28 intended purpose.

1 21. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
2 more of the following methods individually or in combination:¹

3 a. A warning that appears on a product’s label or other labeling.

4 b. Identification of the product at the retail outlet in a manner which provides
5 a warning. Identification may be through shelf labeling, signs, menus, or a combination
6 thereof.

7 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
8 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
9 with such conspicuousness, as compared with other words, statements, designs, or devices
10 in the label, labeling or display as to render it likely to be read and understood by an
11 ordinary individual under customary conditions of purchase or use.

12 d. A system of signs, public advertising identifying the system and toll-free
13 information services, or any other system that provides clear and reasonable warnings.

14 22. Proposition 65 provides that any “person who violates or threatens to violate” the
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
16 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
17 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
19 365 days.

20 **FACTUAL BACKGROUND**

21 23. On January 1, 1988, the State of California listed DEHP as a chemical known to
22 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
23 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

24
25
26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, et.seq. as amended on August 30,
2016, and operative on August 30, 2018.

1 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
2 reproductive toxicity.

3 24. On April 20, 2007, the State of California listed DIDP as a chemical known to the
4 State to cause female reproductive toxicity and DIDP has come under the purview of Proposition
5 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
6 25249.8 & 25249.10(b).

7 25. The exposures that are the subject of the Notice result from the purchase,
8 acquisition, handling, and recommended use of the Products.

9 26. The primary route of exposure to DEHP and DIDP is through dermal absorption.
10 Dermal absorption can occur through direct skin contact when the Products are contacted with
11 bare hands or exposed skin. Exposure through ingestion will occur by touching the Products with
12 subsequent touching of the user's hand to mouth.

13 27. Defendant has marketed, distributed, offered to sell and/or sold the Products in
14 California since at least July 8, 2021. The Products continue to be distributed and sold in California
15 without the requisite warning information.

16 28. At all times relevant to this action, Defendant has knowingly and intentionally
17 exposed users of the Products to DIDP and/or DEHP without first giving a clear and reasonable
18 exposure warning to such individuals.

19 29. As a proximate result of acts by Defendant, as a person in the course of doing
20 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
21 California, including in San Francisco County, have been exposed to Proposition 65 listed
22 chemicals without a clear and reasonable warning on the Products. The individuals subject to the
23 violative exposures include normal and foreseeable users and consumers that use the Products, as
24 well as all others exposed to the Products.

1 SATISFACTION OF NOTICE REQUIREMENTS

2 *The Alleged Violations of Health and Safety Code § 25249.6 to Bed Bath & Beyond*

3 30. Plaintiff purchased the Products from Bed Bath & Beyond. At the time of the
4 purchases, Bed Bath & Beyond did not provide a Proposition 65 exposure warning for DIDP
5 and/or DEHP in a manner consistent with H&S Code § 25603.1 as described *supra*.

6 31. Each Product was sent to a testing laboratory² to determine the phthalate content of
7 the Product.

8 32. The results of these analyses³ determined the Products expose users to DEHP
9 and/or DIDP (each, a “Chemical Test Report,” collectively, the “Chemical Test Reports”).

10 33. Plaintiff provided each Chemical Test Report and each Product to an analytical
11 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable
12 and foreseeable use of the Products, exposure to DIDP and/or DEHP will occur at levels that
13 require Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title
14 27 of the California Code of Regulations.

15 34. Plaintiff received from the analytical chemist an exposure assessment report for
16 each Product which concluded that persons in California who use the Products will be exposed to
17 levels of DEHP or DIDP that require a Proposition 65 exposure warning.

18 35. On July 8, 2021 (Face Values), September 23, 2021 (BIOS), September 23, 2022
19 (Foster & Rye), February 17, 2022 (Monarch), and March 18, 2022 (Goldbug), Plaintiff gave
20

21 _____
22 ² The Face Values Handpicked Summer Necessities bag/tote/kit Chemical Test Report determined
23 the Product exposes users to DEHP; the BIOS living Page Magnifier Chemical Test Report
24 determined the Product exposes users to DEHP; the Foster & Rye Canvas Grilling Apron Chemical
25 Test Report determined the Product exposes users to DEHP; the Monarch Specialties magazine
26 rack Chemical Test Report determined the Product exposes users to DEHP; and the Goldbug
27 Portable Changing Pad Chemical Test Report determined the Product exposes users to DIDP.

28 ³ The Face Values Handpicked Summer Necessities bag/tote/kit Chemical Test Report was
provided to Plaintiff on July 2, 2021; the BIOS living Page Magnifier Chemical Test Report was
provided to Plaintiff on September 20, 2021; and the Foster & Rye apron Chemical Test Report
was provided to Plaintiff on September 20, 2021; the Monarch Specialties magazine rack
Chemical Test Report was provided to Plaintiff on February 15, 2022; ; and the Goldbug Portable
Changing Pad Chemical Test Report was provided to Plaintiff on March 8, 2022.

1 43. Plaintiff, based on her best information and belief, avers that at all relevant times
2 herein, and at least July 8, 2021, continuing until the present, that Defendant has continued to
3 knowingly and intentionally expose California users and consumers of the Products to DEHP or
4 DIDP without providing required warnings under Proposition 65.

5 44. The exposures that are the subject of the Notices result from the purchase,
6 acquisition, handling and recommended use of the Products. The primary route of exposure to
7 these chemicals is through dermal absorption. Dermal absorption of DEHP and DIDP can occur
8 through direct skin contact when the Products are contacted with bare hands or exposed skin.
9 Exposure through ingestion will occur by touching the Products with subsequent touching of the
10 user's hand to mouth, or direct contact with the user's mouth.

11 45. Plaintiff, based on her best information and belief, avers that such exposures will
12 continue every day until clear and reasonable warnings are provided to purchasers and users or
13 until this known toxic chemical is removed from the Products.

14 46. Defendant has knowledge that the normal and reasonably foreseeable use of the
15 Products exposes individuals to DEHP or DIDP, and Defendant intends that exposures to DEHP
16 or DIDP will occur by its deliberate, non-accidental participation in the importation, distribution,
17 sale and offering of the Products to consumers in California

18 47. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
19 Complaint.

20 48. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
21 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

22 49. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
23 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
3 relief:

4 A. That the court assess civil penalties against defendant in the amount of \$2,500 per
5 day for each violation for up to 365 days in accordance with Health and Safety Code §
6 25249.7(b);

7 B. That the court preliminarily and permanently enjoin Defendant, mandating
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
10 amount of \$50,000.00.

11 D. That the court grant any further relief as may be just and proper.

12 Dated: July 6, 2022

BRODSKY & SMITH

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