

**ELECTRONICALLY FILED**  
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County of Alameda  
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By: Cheryl Clark,  
Deputy Clerk

1 Jeremy Fietz, State Bar No. 200396  
LAW OFFICES OF JEREMY FIETZ  
2 1510 Fourth Street  
Santa Rosa, CA 95404  
3 Telephone: (707) 236-0088

4 David R. Bush, State Bar No. 154511  
LAW OFFICE OF DAVID R. BUSH  
5 321 South Main Street #502  
Sebastopol CA 95472  
6 Telephone: (707) 321-5028

7 Attorneys for Plaintiff  
MICHAEL DIPIRRO

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION  
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14 MICHAEL DIPIRRO,  
15 Plaintiff,  
16 v.  
17 AYC GROUP, LLC; and DOES 1-150,  
18 Defendants.

Case No. **22CV013241**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code. § 25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MICHAEL  
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s  
4 right to be informed of the presence of Dibutyl phthalates (“DBP”), a toxic chemical, for  
5 exposures created by the use of hoses and sprayers sold in California, including but not limited  
6 to the *AYC B-031 Black Sprayer*.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
8 warn California citizens about the risk of exposure to DBP from the use of the hoses and  
9 sprayers that are manufactured, distributed, and/or offered for sale or use to consumers  
10 throughout the State of California without the requisite health hazard warnings.

11 3. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
12 warn California citizens about the risk of exposure to DBP in hoses and sprayers that are  
13 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of  
14 California.

15 4. Exposure to high levels of DBP are commonly produced through the normal and  
16 foreseeable use of hoses and sprayers that defendants manufacture, distribute, and/or offer for  
17 sale to consumers throughout the State of California without requisite health hazard warnings.

18 5. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
19 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
20 doing business shall knowingly and intentionally expose any individual to a chemical known to  
21 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
22 warning to such individual . . . .” Health & Safety Code § 25249.6.

23 6. Pursuant to Proposition 65, on October 1, 1993, California identified and listed  
24 DBP as a chemical known to cause cancer. DBP became subject to the “clear and reasonable  
25 warning” requirements of the act one year later on October 1, 1994, for cancer. On December  
26 2, 1994, California identified and listed DBP as a chemical known to cause developmental  
27 toxicity (male, female). DBP became subject to the “clear and reasonable warning”  
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1 requirements of the act one year later on October 1, 1995, for developmental toxicity (male,  
2 female). Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
3 DBP is referred to hereinafter as the “LISTED CHEMICAL.”

4 7. Defendants manufacture or otherwise process for sale, distribute, and sell in  
5 California *hoses and sprayers* including, but not limited to the *AYC B-031 Black Sprayer*, the  
6 normal and foreseeable use of which results in exposure to DBP at levels that require health  
7 hazard warnings under Proposition 65. All such hoses and sprayers are referred to collectively  
8 hereinafter as the “PRODUCTS.”

9 8. Defendants’ failure to warn consumers and other individuals in the State of  
10 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’  
11 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
12 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)  
13 & (b)(1).

14 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
15 permanent injunctive relief to compel defendants to provide purchasers or users of the  
16 PRODUCTS with the required warning regarding the health hazards of the LISTED  
17 CHEMICAL. Health & Safety Code § 25249.7(a).

18 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
19 penalties against defendants for their violations of Proposition 65.

## 20 **PARTIES**

21 11. Plaintiff MICHAEL DIPIRRO is a citizen of the State of California who is  
22 dedicated to protecting the health of California citizens through the elimination or reduction of  
23 toxic exposures from consumer products; and he brings this action in the public interest  
24 pursuant to Health and Safety Code section 25249.7(d).

25 12. Defendant AYC GROUP, LLC (“AYC GROUP”) is a person in the course of  
26 doing business within the meaning of Health and Safety Code section 25249.11.

1 13. AYC GROUP manufactures (or otherwise processes for sale), distributes, and/or  
2 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
3 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

4 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
5 person in the course of doing business within the meaning of Health and Safety Code section  
6 25249.11.

7 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
8 cultivate, harvest and/or manufacture, or imply by their conduct that they research, test, design,  
9 assemble, fabricate, cultivate, harvest and/or manufacture one or more of the PRODUCTS  
10 offered for sale or use in the State of California.

11 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
12 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

13 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
15 in the State of California.

16 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
17 the course of doing business within the meaning of Health and Safety Code section 25249.11.

18 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
19 State of California.

20 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
21 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
22 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
23 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
24 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

25 **VENUE AND JURISDICTION**

26 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
27 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
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1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
3 county with respect to the PRODUCTS.

4 22. The California Superior Court has jurisdiction over this action pursuant to  
5 California Constitution Article VI, section 10, which grants the Superior Court “original  
6 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
7 which this action is brought does not specify any other basis of subject matter jurisdiction.

8 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
9 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
10 association that is a citizen of the State of California, has sufficient minimum contacts in the  
11 State of California, and/or otherwise purposefully avails itself of the California market.  
12 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
13 California courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65 - Against All Defendants)**

16 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 48, inclusive.

18 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
19 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be  
20 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
21 harm.”

22 26. Proposition 65 states, “[n]o person in the course of doing business shall  
23 knowingly and intentionally expose any individual to a chemical known to the state to cause  
24 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
25 individual . . . .” Health & Safety Code § 25249.6.

26 27. On April 8, 2022, plaintiff’s 60-Day Notice of Violation, together with the  
27 requisite certificate of merit, was provided to AYC GROUP and certain public enforcement  
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1 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
2 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the  
3 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,  
4 without the individual purchasers and users first having been provided with a “clear and  
5 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

6 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
7 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
8 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day  
9 Notices of Violation. As such, DEFENDANTS’ violations are ongoing and continuous in  
10 nature, and will continue to occur in the future.

11 29. After receiving the claims asserted in the 60-day Notices of Violation, the  
12 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
13 cause of action against DEFENDANTS under Proposition 65.

14 30. The PRODUCTS manufactured, distributed, and offered for sale or use in  
15 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
16 allowable state limits, such that they require a “clear and reasonable” warning under Proposition  
17 65.

18 31. DEFENDANTS knew or should have known that the PRODUCTS they  
19 manufacture, distribute, and offer for sale or use in California contain the LISTED  
20 CHEMICAL.

21 32. The exposures to the LISTED CHEMICAL result from the normal use of the  
22 PRODUCTS in such a way as to expose individuals through dermal contact during reasonably  
23 foreseeable use.

24 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
25 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
26 defined by California Code of Regulations title 27, section 25602(b).

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1 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
2 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact.

3 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
4 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-  
5 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
6 sale or use to individuals in the State of California.

7 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
8 consumers and other individuals in the State of California who were or who would become  
9 exposed to the LISTED CHEMICAL through dermal contact during the reasonably foreseeable  
10 uses of the PRODUCTS.

11 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
12 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
13 contact resulting from the reasonably foreseeable use of the PRODUCTS sold by  
14 DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to  
15 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

16 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
17 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
18 for each violation.

19 39. As a consequence of the above-described acts, Health and Safety Code  
20 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
21 DEFENDANTS.

22 **PRAYER FOR RELIEF**

23 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

24 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
25 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

26 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
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offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

- 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: 06/22/2022

Respectfully Submitted,  
LAW OFFICE OF DAVID R. BUSH

By:   
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David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO