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County of Alameda

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By: Lynn Wiley,
Deputy Clerk

1 David R. Bush, State Bar No. 154511
LAW OFFICE OF DAVID R. BUSH
2 321 South Main Street #502
Sebastopol CA 95472
3 Telephone: (707) 321-5028

4 Jeremy Fietz, State Bar No. 200396
LAW OFFICES OF JEREMY FIETZ
5 1510 Fourth Street
Santa Rosa, CA 95404
6 Telephone: (707) 999-9999

7 Attorneys for Plaintiff
MICHAEL DIPIRRO

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13
14 MICHAEL DIPIRRO,

15 Plaintiff,

16 v.

17 THE BOEING COMPANY; and DOES 1-150,

18 Defendants.

Case No. **23CV027488**

**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 Diethylhexyl phthalate (“DEHP”), a toxic chemical, for
5 exposures created by the use of aviation chart wallets sold in California, including but not
6 limited to the *Jeppesen-Chart Wallet, Item #10009530, AM621162*.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to DEHP from the use of the aviation chart
9 wallets 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 DEHP in aviation chart wallets 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 DEHP are commonly produced through the normal and
16 foreseeable use of aviation chart wallets 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 January 1, 1988, California identified and listed
24 DEHP as a chemical known to cause cancer. DEHP became subject to the “clear and
25 reasonable warning” requirements of the act one year later on January 1, 1988, for cancer. On
26 October 24, 2003, California identified and listed DEHP as a chemical known to cause
27 developmental toxicity (male). DEHP became subject to the “clear and reasonable warning”
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1 requirements of the act one year later on October 24, 2004, for developmental toxicity (male).
2 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is
3 referred to hereinafter as the “LISTED CHEMICAL.”

4 7. Defendants manufacture or otherwise process for sale, distribute, and sell aviation
5 chart wallets including, but not limited to the *Jeppesen-Chart Wallet, Item #10009530,*
6 *AM621162*, the normal and foreseeable use of which results in exposure to DEHP at levels that
7 require health hazard warnings under Proposition 65. All such aviation chart wallets are
8 referred to collectively 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 THE BOEING COMPANY (“BOEING”) is a person in the course of
26 doing business within the meaning of Health and Safety Code section 25249.11.

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 October 14, 2022, plaintiff’s 60-Day Notice of Violation, together with the
27 requisite certificate of merit, was provided to BOEING and certain public enforcement agencies
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1 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
2 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
3 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
4 individual purchasers and users first having been provided with a “clear and reasonable
5 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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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: 02/08/2023

Respectfully Submitted,
LAW OFFICE OF DAVID R. BUSH

By: 
David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO