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

10
11 MONARCH LLC,) Unlimited Jurisdiction
12)
Plaintiff,)
13 vs.) CASE NO. **24STCV11395**
14)
15) COMPLAINT FOR CIVIL PENALTY AND
INNOVATIVE HOME CREATIONS, LTD.;) INJUNCTIVE RELIEF
16 AMAZON.COM, INC.; WALMART, INC.;)
and DOES 1 through 100, Inclusive,) (Health & Safety Code § 25249.5 et seq.)
17 Defendants.)
18)
19)
20)
21)

1 Plaintiff, MONARCH LLC, hereby alleges:

2 **I. PRELIMINARY STATEMENT**

3 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure
4 to Di (2-ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause
5 reproductive harm.

6 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety
7 Code § 25249.6 (also known as “Proposition 65”) businesses must provide persons with a “clear and
8 reasonable warning” before exposing individuals to chemicals known to the state to cause cancer, birth
9 defects or other reproductive harm.

10 3. Plaintiff alleges a violation of Proposition 65 in product(s) sold by Defendants without
11 first giving clear and reasonable warning.

12 **II. PARTIES**

13 4. Plaintiff is a limited liability company formed pursuant to the laws of the State of
14 California, made up of California citizens, represented by and through its counsel of record, the
15 Greenbaum Law Firm.

16 5. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65 may
17 be brought by “any person in the public interest.”

18 6. Defendant INNOVATIVE HOME CREATIONS, LTD., is a business entity with ten or
19 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
20 distribution, or sale of craft caddy products manufactured by or for Defendant, imported by or for
21 Defendant, or distributed or sold by or for Defendant, including, but not limited to, Free Standing Craft
22 Caddy with 3 Pockets, that contains DEHP, for sale within the State of California, without first giving
23 clear and reasonable warning.

24 7. Defendant AMAZON.COM, INC., is a business entity with ten or more employees that
25 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of
26 craft caddy products manufactured by or for Defendant, imported by or for Defendant, or distributed
27 or sold by or for Defendant, including, but not limited to, Free Standing Craft Caddy with 3 Pockets,
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1 that contains DEHP, for sale within the State of California, without first giving clear and reasonable
2 warning.

3 8. Defendant WALMART, INC., is a business entity with ten or more employees that sells,
4 or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of craft
5 caddy products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold
6 by or for Defendant, including, but not limited to, Free Standing Craft Caddy with 3 Pockets, that
7 contains DEHP, for sale within the State of California, without first giving clear and reasonable
8 warning.

9 9. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
10 Plaintiff suspects they are business entities with at least ten or more employees that at all times relevant
11 to this complaint, authorized the manufacture, distribution, or sale of craft caddy products
12 manufactured by or for Defendants, imported by or for Defendants, or distributed or sold by or for
13 Defendants, including, but not limited to, Free Standing Craft Caddy with 3 Pockets, that contains
14 DEHP, for sale within the State of California, without first giving clear and reasonable warning.

15 10. Defendants named in paragraphs 6 through 9 have at all times relevant to this complaint,
16 authorized the manufacture, distribution, or sale of craft caddy products manufactured by or for
17 Defendants, imported by or for Defendants, or distributed or sold by or for Defendants, including, but
18 not limited to, Free Standing Craft Caddy with 3 Pockets, that contains DEHP (hereinafter
19 “PRODUCT”), for sale within the State of California, without first giving clear and reasonable
20 warning.

21 **III. JURISDICTION AND VENUE**

22 11. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
23 because this case is a cause not given by statute to other trial courts.

24 12. This Court has jurisdiction over Defendants, because they are business entities that do
25 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
26 themselves of the California market, through the sale, marketing, and use of its products in California,
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1 to render the exercise of jurisdiction over it by the California courts consistent with traditional notions
2 of fair play and substantial justice.

3 13. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
4 County because Defendants' products are sold and consumed in this county.

5 **IV. STATUTORY BACKGROUND**

6 14. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
7 passed as "Proposition 65" by a vote of the people in November of 1986.

8 15. The warning requirement of Proposition 65 is contained in Health & Safety Code §
9 25249.6, which provides:

10 No person in the course of doing business shall knowingly and intentionally
11 expose any individual to a chemical known to the state to cause cancer or
12 reproductive toxicity without first giving clear and reasonable warning to
13 such individual, except as provided in Section 25249.10.

14 16. An exposure to a chemical in a consumer product is one "which results from a person's
15 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
16 or any exposure that results from receiving a consumer service." (27 CCR 25602(b))

17 17. Proposition 65 establishes a procedure by which the State develops a list of chemicals
18 "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code § 25249.8.)

19 18. No warning need be given concerning an exposure for which federal law governs
20 warning in a manner that preempts state authority. (Health & Safety Code § 25249.10(a).)

21 19. No warning need be given concerning a listed chemical until one year after the chemical
22 first appears on the list. (Health & Safety Code § 25249.10(b).)

23 20. No warning need be given concerning an exposure for which the person responsible can
24 show that the exposure poses no significant risk assuming lifetime exposure at the level in question for
25 substances known to the state to cause cancer, and that the exposure will have no observable effect
26 assuming exposure at one thousand (1000) times the level in question for substances known to the state
27 to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the

1 evidence and standards which form the scientific basis for the listing of such chemical pursuant to
2 subdivision (a) of Section 25249.8. In any action brought to enforce Section 25249.6, the burden of
3 showing that an exposure meets the criteria of this subdivision shall be on the defendant. (Health &
4 Safety Code § 25249.10(c).)

5 21. Any person “violating or threatening to violate” the statute may be enjoined in any court
6 of competent jurisdiction. (Health & Safety Code, § 25249.7.)

7 22. To “threaten to violate” is defined to mean “to create a condition in which there is a
8 substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

9 23. In addition, violators are liable for civil penalties of up to \$2,500 per day for each
10 violation, recoverable in a civil action. (Health & Safety Code § 25249.7 (b).)

11 24. Actions to enforce the law “may be brought by the Attorney General in the name of the
12 People of the State of California [or] by any district attorney [or] by any City Attorney of a City having
13 a population in excess of 750,000 . . .” (Health & Safety Code § 25249.7(c).)

14 25. Private parties are given authority to enforce Proposition 65 “in the public interest,” but
15 only if the private party first provides written notice of a violation to the alleged violator, the Attorney
16 General, and every District Attorney in whose jurisdiction the alleged violation occurs.

17 26. If no public prosecutors commence enforcement within sixty days, then the private party
18 may sue. (Health & Safety Code § 25249.7(d).)

19 **V. FACTS**

20 27. DEHP was placed on the Governor’s list of chemicals known to the State to cause
21 reproductive toxicity on October 24, 2003. (27 CCR 27001(b))

22 28. Defendant INNOVATIVE HOME CREATIONS, LTD. has a business relationship with
23 the online retailers Defendants Walmart, Inc., and Amazon.com, Inc.

24 29. Neither the PRODUCT’S online listing, nor the PRODUCT itself, contained or
25 presented a Proposition 65 warning label.

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1 30. Pursuant to the statute and regulations referenced above, on May 11, 2023, Plaintiff
2 served a Notice of Violation on the Office of the Attorney General, Defendant Amazon.com, Inc.,
3 Defendant Walmart, Inc., Bonanza.com, and OfficeSupply.com, as well as all required public agencies.

4 31. Online retailers Bonanza.com and OfficeSupply.com removed the products for sale.

5 32. Plaintiff purchased the PRODUCT from Amazon on or about May 23, 2023.

6 33. Plaintiff purchased the PRODUCT from Walmart on or about May 23, 2023.

7 34. Pursuant to the statute and regulations referenced above, on November 13, 2023,
8 Plaintiff served a new Notice of Violation on the Office of the Attorney General, Defendant Innovative
9 Home Creations, LTD., Amazon.com, Inc., and Walmart, Inc. as well as all required public agencies.

10 35. Plaintiff is unaware of any governmental prosecution against Defendants.

11 36. At least sixty (60) days have elapsed since service of all Notices of Violation.

12 37. Based upon consultation with experts, Plaintiff alleges that individuals who purchase,
13 handle, or use the PRODUCT are exposed to DEHP chiefly through:

14 a. contact between the item and the skin;

15 b. transfer of DEHP from the skin to the mouth, both by transfer of DEHP directly
16 from the hand to mouth, and indirectly by transfer of DEHP from the skin to objects that are
17 placed in the mouth, such as food; and

18 c. through absorption of DEHP through the skin.

19 38. Such individuals are thereby exposed to the DEHP that is present on or in the
20 PRODUCT during the intended and reasonably foreseeable use of the PRODUCT.

21 39. At all times material to this complaint, Defendants have had knowledge that the
22 PRODUCT contains DEHP and that an individual's skin may contact DEHP through the intended and
23 reasonably foreseeable use of the PRODUCT.

24 40. At all times material to this complaint, Defendants have had knowledge that individuals
25 within the State of California handle the PRODUCT, which contains DEHP.

26 41. At all times material to this complaint, Defendants knew that the PRODUCT was sold
27 throughout the State of California, and Defendants profited from such sales.

1 42. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
2 the sale of the PRODUCT, thereby exposing consumers to DEHP.

3 43. At all times material to this complaint, therefore, Defendants have knowingly and
4 intentionally exposed individuals within the State of California to DEHP.

5 44. The exposure is knowing and intentional because it is the result of the Defendants'
6 deliberate act of authorizing the sale of products known to contain DEHP, in a manner whereby these
7 products were, and would inevitably be, sold to consumers within the state of California, and with the
8 knowledge that the intended use of this PRODUCT would result in exposures to DEHP by individuals
9 within the State of California.

10 45. Defendants have failed to provide clear and reasonable warnings that the use of the
11 PRODUCT in question in California results in exposure to a chemical known to the State of California
12 to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those
13 individuals by any other person.

14 **VI. FIRST CAUSE OF ACTION**

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

16 46. Plaintiff incorporates and re-alleges by reference all the foregoing paragraphs as if fully
17 set forth herein.

18 47. By committing the acts alleged above, Defendants have, in the course of doing business,
19 knowingly and intentionally exposed individuals in California to chemicals known to the State of
20 California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
21 such individuals, within the meaning of Health & Safety Code § 25249.6.

22 48. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
23 \$2,500 per day for each violation, as well as other remedies.

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25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays that the Court:
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1 1. Pursuant to the First Cause of Action, grant civil penalties of \$2,500.00 per violation
2 per day, going back one year from the date of filing, which at the time of filing is at least
3 \$7,500.00.

4 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
5 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendants from
6 exposing persons within the State of California to Listed Chemicals caused by the use of their
7 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further
8 application to the court;

9 3. Award Plaintiff the costs of suit;

10 4. Pursuant to Code of Civil Procedure § 1021.5, award Plaintiff their reasonable
11 attorney's fees and costs of at least \$25,000.00 as of the filing of this Complaint, and an
12 anticipated additional \$10,000.00 of attorney's fees to obtain a default judgment, if a default is
13 entered; and

14 5. Grant such other and further relief as the court deems just and proper.

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16 Respectfully submitted,

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18 DATED: May 7, 2024

19 GREENBAUM LAW FIRM

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23 By: _____
24 DANIEL N. GREENBAUM
25 Attorneys for Plaintiff
26 MONARCH
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