

1 Plaintiff, MOTHERS OVERSIGHT NETWORK FOR ACTIONABLE CONTAMINANT
2 HARM [MONARCH], LLC, hereby alleges:

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4 **I. PRELIMINARY STATEMENT**

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

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

12 3. Plaintiff alleges a violation of Proposition 65 in products sold by Defendants without
13 first giving clear and reasonable warning.

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15 **II. PARTIES**

16 4. Plaintiff, Mothers Oversight Network for Actionable Contaminant Harm
17 [MONARCH], LLC (“MONARCH”), is a limited liability company formed pursuant to the laws of the
18 State of California, made up of a California citizen, represented by and through its counsel of record,
19 the Greenbaum Law Firm. PLAINTIFF sues herein as MONARCH which name is incorporated in its
20 name under the articles of incorporation, as stated above.

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

23 6. Defendant Hobby Lobby is a business entity with ten or more employees that sells, or
24 has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of clear pouch
25 products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or
26 for Defendant, including, but not limited to, Hobby Lobby Clear Pouch - 2331569, that contains DEHP,
27 for sale within the State of California, without first giving clear and reasonable warning.

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

4 14. An exposure to a chemical in a consumer product is one “which results from a person’s
5 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
6 or any exposure that results from receiving a consumer service.” (27 CCR 25602(b))

7 15. Proposition 65 establishes a procedure by which the State develops a list of chemicals
8 “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code § 25249.8.)

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

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

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

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

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

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

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

25 26 V. FACTS

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

1 24. Plaintiff purchased the PRODUCT from Hobby Lobby on or about September 25, 2023.

2 25. The PRODUCT itself did not contain or present a Proposition 65 warning label.

3 26. On or about February 19, 2024, Plaintiff's expert prepared a report summarizing the
4 results of analysis on the PRODUCT, including the amount of the DEHP in the PRODUCT.

5 27. Based on the levels, Plaintiff's expert opined that use of the PRODUCT would lead to
6 exposure to DEHP above the safe harbor levels set by the Office of Environment Health Hazard
7 Assessment (OEHHA).

8 28. Based on that report and opinion, and lack of warning labels on the PRODUCT, Plaintiff
9 and its counsel prepared a Sixty Notice of Violation.

10 29. Pursuant to the statute and regulations referenced above, on February 29, 2024, Plaintiff
11 served a Notice of Violation on the Office of the Attorney General and Defendant, and all required
12 public agencies.

13 30. Plaintiff is unaware of any governmental prosecution against Defendant.

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

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

17 a. contact between the item and the skin;

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

21 c. through absorption of DEHP through the skin.

22 33. Such individuals are thereby exposed to the DEHP that is present on or in the
23 PRODUCT during the intended and reasonably foreseeable use of the PRODUCT.

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

27 35. At all times material to this complaint, Defendant has had knowledge that individuals
28 within the State of California handle the PRODUCT, which contains DEHP.

1 WHEREFORE, Plaintiff prays that the Court:

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

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

8 3. Award Plaintiff the costs of suit;

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

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

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14 Respectfully submitted,

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16 DATED: September 25, 2024

17 GREENBAUM LAW FIRM

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20 By: DANIEL N. GREENBAUM
21 Attorneys for Plaintiff
22 MONARCH, LLC
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