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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION
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19 PAUL WOZNIAK

20 Plaintiff,

21 v.

22 DUCK HOUSE, INC.; BIG 5 SPORTING
23 GOODS CORPORATION; and DOES 1-150,
24 inclusive,

25 Defendants.
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27
28

ENDORSED
FILED

AUG 29 2011

Superior Court
County of Santa Clara
Clerk

D. Wozniak

Case No. **114CV270085**

**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 PAUL WOZNIAK
3 in the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical that is found
5 in vinyl coasters that are sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risks of exposures to DEHP present in and on the vinyl
8 coasters manufactured, distributed, and offered for sale or use to consumers throughout the State
9 of California.

10 3. Detectable levels of DEHP are commonly found in and on components of vinyl
11 coasters that defendants import, manufacture, distribute, ship, sell and/or offer for sale to
12 consumers throughout the State of California.

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

18 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, vinyl coasters containing the LISTED CHEMICAL, including, but not
25 limited to, the *Duck House Sports Crystal Freezer Mug with Free Coaster, Denver Broncos,*
26 *#04192431, UPC #0 94131 05108 6.* All such vinyl coasters containing the LISTED
27 CHEMICAL are referred to collectively hereinafter as the “PRODUCTS.”
28

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
4 person in the course of doing business within the meaning of Health and Safety Code s sections
5 25249.6 and 25249.11.

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

10 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
11 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
12 and 25249.11.

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

16 19. 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 sections 25249.6
18 and 25249.11.

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

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

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 29. On March 26, 2014, plaintiff’s sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to DUCK HOUSE, BIG 5 SPORTING GOODS and
9 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
10 PRODUCTS containing the LISTED CHEMICAL, consumers, and other individuals in the
11 State of California were being exposed to the LISTED CHEMICAL resulting from their
12 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
13 having received a “clear and reasonable warning” regarding such toxic exposures, as required
14 by Proposition 65.

15 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
19 continuous in nature, and will continue to occur in the future.

20 31. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
21 enforcement agencies have failed to commence and diligently prosecute a cause of action
22 against DEFENDANTS under Proposition 65.

23 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
24 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
25 reasonably foreseeable uses of these products result in exposures that require a “clear and
26 reasonable” warning under Proposition 65.

1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

4 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
5 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

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

9 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
10 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
11 and/or ingestion.

12 37. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
13 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
14 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
15 use to individuals in the State of California.

16 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 workers, consumers and other individuals in California not covered by California’s
18 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,
19 exposed to the LISTED CHEMICAL.

20 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
21 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
22 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
23 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”
24 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
25 adequate remedy at law.

