

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 19 2015

CLERK OF THE COURT
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17 LAURENCE VINOCUR

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

20 LAURENCE VINOCUR,
21 Plaintiff,

22 v.

23 MONO-SYSTEMS, INC., and DOES 1 -
24 100, inclusive,
25 Defendants.

Case No. CGC-15-544818

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6, *et seq.*)

BY FAX

NATURE OF THE ACTION

26 1. This Complaint is a representative action brought by plaintiff LAURENCE
27 VINOCUR ("Plaintiff") in the public interest of the citizens of the State of California to
28 enforce the citizens' right to be informed of the presence of Di(2-ethylhexyl)phthalate
("DEHP"), a toxic chemical found in vinyl/PVC cord protectors sold in California. DEHP is a
toxic chemical used to treat vinyl/PVC, which is used in a variety of products.

1 section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
2 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
3 ascertained, their true names and capacities shall be reflected in an amended complaint.

4 16. MonoSystems and Defendants Does 1 -100 are collectively referred to herein as
5 “Defendants.”

6 **VENUE AND JURISDICTION**

7 17. Venue is proper in San Francisco Superior Court, pursuant to Code of Civil
8 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
9 because Plaintiff seeks civil penalties against Defendants, because one or more instances of
10 wrongful conduct occurred, and continue to occur, in the City and County of San Francisco,
11 and/or because Defendants conducted, and continue to conduct, business in this county with
12 respect to the Products.

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

17 19. The California Superior Court has jurisdiction over Defendants based on
18 Plaintiff’s information and good faith belief that each of the Defendants is a person, firm,
19 corporation, or association that is a citizen of the State of California, has sufficient minimum
20 contacts in the State of California, and/or otherwise purposefully avails itself of the California
21 market. Defendants’ purposeful availment of California as a marketplace for the Products
22 renders the exercise of personal jurisdiction by California courts over Defendants consistent
23 with traditional notions of fair play and substantial justice.

24 **FIRST CAUSE OF ACTION**

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

26 20. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 19, inclusive.

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

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

8 23. On October 24, 2014, Plaintiff’s sixty-day notice of violation, together with the
9 requisite certificate of merit, was provided to Mono-Systems and certain public prosecutors
10 stating that, as a result of Defendants’ sales of the Products containing DEHP, purchasers and
11 users in the State of California were being exposed to DEHP resulting from their reasonably
12 foreseeable use of the Products, without the individual purchasers and users first having been
13 provided with a “clear and reasonable warning” regarding such toxic exposures, as required by
14 Proposition 65. This notice is attached hereto as Exhibit A.

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

20 25. After receiving Plaintiff’s sixty-day notice of violation, the appropriate public
21 prosecutors have failed to commence and diligently prosecute a cause of action against
22 Defendants under Proposition 65.

23 26. The Products manufactured, imported, distributed, sold, and offered for sale or
24 use in California by Defendants contain the Listed Chemical such that they require a “clear and
25 reasonable” warning under Proposition 65.

26 27. Defendants knew or should have known that the Products they manufacture,
27 import, distribute, sell, and offer for sale or use in California contain the Listed Chemical.

1 28. The Listed Chemical is present in or on the Products in such a way as to expose
2 individuals to the Listed Chemical through dermal contact and/or ingestion during reasonably
3 foreseeable use of the Products including through workplace exposure to the Products.

4 29. The normal and reasonably foreseeable uses of the Products have caused, and
5 continue to cause, consumer exposures to the Listed Chemical, as such exposures are defined
6 by the California Code of Regulations Title 27, section 25602(b).

7 30. Defendants had knowledge that the normal and reasonably foreseeable uses of
8 the Products expose individuals to the Listed Chemical through dermal contact and/or
9 ingestion.

10 31. Defendants intended that such exposures to the Listed Chemical from the
11 reasonably foreseeable uses of the Products would occur by Defendants’ deliberate, non-
12 accidental participation in the manufacture, importation, distribution, sale, and offering of the
13 Products for sale or use to individuals in the State of California.

14 32. Defendants failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in the State of California who were or who would become
16 exposed to the Listed Chemical through dermal contact and/or ingestion during the reasonably
17 foreseeable uses of the Products including through workplace exposure to the Products.

18 33. Contrary to the express policy and statutory prohibition of Proposition 65
19 enacted directly by California voters, individuals exposed to the listed chemical through dermal
20 contact and/or ingestion resulting from the reasonably foreseeable uses of the Products
21 including through workplace exposure to the Products sold by Defendants without a “clear and
22 reasonable warning,” have suffered, and continue to suffer, irreparable harm for which they
23 have no plain, speedy, or adequate remedy at law.

24 34. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
25 above-described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day for
26 each violation.

Exhibit A

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

DATE: October 24, 2014

TO: Jordan Handler, President – Mono-Systems, Inc.
California Attorney General’s Office;
District Attorney’s Office for 58 Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

FROM: Laurence Vinocur

I. INTRODUCTION

My name is Laurence Vinocur. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”). As noted above, notice is also being provided to the alleged violator, Mono-Systems, Inc. (the “Violator”). The violations covered by this Notice consist of the product exposures, routes of exposure, and type of harm potentially resulting from exposure to the toxic chemical (“listed chemical”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A
Listed Chemical: Di(2-ethylhexyl)phthalate (“DEHP”)
Routes of Exposure: Ingestion, Dermal
Types of Harm: Birth Defects and Other Reproductive Harm

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the category covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemical from the use of the products have been occurring without the clear and reasonable warning required by Proposition 65, dating as far back as October 24, 2011. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the listed chemical from the reasonably foreseeable use of the products.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. Women of childbearing age ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Laurence Vinocur
c/o Josh Voorhees
The Chanler Group
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the DEHP exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any district or city attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL NOTICE INFORMATION

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warning” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
FlexiRings, FL5020-B, UPC #6 00170 02462 4	Lowe’s Yolo County, Northern California	Mono-Systems, Inc.

VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Vinyl/PVC Cord Protectors	FlexiRings, FL5020-B, UPC #6 00170 02462 4	Di(2-ethylhexyl)phthalate

*The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product Category/Type” in Exhibit A. Further, it is this citizen’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On October 24, 2014, I served the following documents:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH
HEALTH & SAFETY CODE § 25249.7(d);**

PROPOSITION 65: A SUMMARY;

CERTIFICATE OF MERIT; AND

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE
ATTORNEY GENERAL)**

on the entity listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Jordan Handler, President
Mono-Systems, Inc.
4 International Drive, Suite 280
Rye Brook, NY 10573

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

A list of addresses for each of these recipients is attached.

Executed on October 24, 2014, at Berkeley, California.



Caroline Pak

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: October 24, 2014



Clifford A. Chanler

SERVICE LIST

The Honorable Nancy O'Malley
Alameda County District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Terese Drabec
Alpine County District Attorney
270 Laramie Street, PO BOX 248
Markleeville, CA 96120

The Honorable Todd Riebe
Amador County District Attorney
708 Court Street
Jackson, CA 95642

The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Drive
Orville, CA 95965

The Honorable Barbara Yook
Calaveras County District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249

The Honorable John R. Poyner
Colusa County District Attorney
346 Fifth Street
Colusa, CA 95932

The Honorable Mark Peterson
Contra Costa County District Attorney
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The Honorable Jon Alexander
Del Norte County District Attorney
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Crescent City, CA 95531

The Honorable Vernon Pierson
El Dorado County District Attorney
515 Main Street
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The Honorable Elizabeth Egan
Fresno County District Attorney
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The Honorable Robert Maloney
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The Honorable Paul Gallegos
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The Honorable Gilbert Otero
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The Honorable Arthur Maillet
Inyo County District Attorney
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Independence, CA 93526

The Honorable Lisa Green
Kern County District Attorney
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The Honorable Greg Strickland
Kings County District Attorney
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Hanford, CA 93230

The Honorable Donald Anderson
Lake County District Attorney
255 North Forbes Street
Lakeport, CA 95453

The Honorable Robert Burns
Lassen County District Attorney
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Susanville, CA 96130

The Honorable Steve Cooley
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The Honorable Michael Keitz
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The Honorable C. David Eyster
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The Honorable Gary Woolverton
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The Honorable Dean Flippo
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The Honorable Clifford Newell
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San Bernardino, CA 92415

The Honorable Bonnie Dumanis
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San Diego, CA 92101

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San Francisco, CA 94103

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San Luis Obispo, CA 93408

The Honorable Stephen Wagstaffe
San Mateo County District Attorney
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Redwood City, CA 94063

The Honorable Joyce Dudley
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Santa Barbara, CA 93101

The Honorable Jeffrey Rosen
Santa Clara County District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110

The Honorable Bob Lee
Santa Cruz County District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060

The Honorable Stephen Carlton
Shasta County District Attorney
1355 West Street
Redding, CA 96001

The Honorable Lawrence Allen
Sierra County District Attorney
100 Courthouse Square, Second Floor
Downieville, CA 95936

The Honorable James Kirk Andrus
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P.O. Box 986
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The Honorable Carl Adams
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The Honorable Jeff Reisig
Yolo County District Attorney
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Woodland, CA 95695

The Honorable Patrick McGrath
Yuba County District Attorney
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The Honorable Dennis J. Herrera
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City Hall, Room 234
San Francisco, CA 94102

The Honorable Richard Doyle
Office of the City Attorney, San Jose
200 East Santa Clara Street
San Jose, CA 95113

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550