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FILED

JUN 5 2015

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chats, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 LAURENCE VINO CUR,

15 Plaintiff,

16 v.

17 LAURA GELLER BEAUTY, LLC; ULTA
18 SALON, COSMETICS & FRAGRANCE,
19 INC.; and DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 1502069

**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 LAURENCE
3 VINOCUR (“Plaintiff” or “Vinocur”) in the public interest of the citizens of California to enforce
4 the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in vinyl/PVC cosmetic bag hand straps sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about the risk of exposure to DEHP present in and on the vinyl/PVC cosmetic
8 bag hand straps manufactured, distributed, and offered for sale or use to consumers throughout
9 California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC cosmetic
11 bag hand straps that defendants manufacture, import, distribute, sell and/or offer for sale to
12 consumers throughout California.

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

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

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC
24 cosmetic bag hand straps containing DEHP as follows:

25 a. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC
26 cosmetic bag hand straps containing DEHP without a warning including, but not limited to, the
27 *Laura Geller Beauty Flawless in a Flash Travel Size Skin-Perfecting Kit, UPC #8 49154 00318 1.*

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1 30. On March 13, 2015, plaintiff's sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to Laura Geller Beauty, LLC, Ulta Salon, Cosmetics &
3 Fragrance, Inc., and certain public enforcement agencies stating that, as a result of DEFENDANTS'
4 sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of
5 California were being exposed to the LISTED CHEMICAL resulting from their reasonably
6 foreseeable use of the PRODUCTS, without the individual purchasers and users first having been
7 provided with a "clear and reasonable warning" regarding such toxic exposures, as required by
8 Proposition 65.

9 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
10 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and
11 DEFENDANTS' violations have continued to occur beyond their receipt of plaintiff's sixty-day
12 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and
13 will continue to occur in the future.

14 32. After receiving plaintiff's sixty-day notice of violation, the appropriate public
15 enforcement agencies have failed to commence and diligently prosecute a cause of action against
16 DEFENDANTS under Proposition 65.

17 33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or
18 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a
19 "clear and reasonable" warning under Proposition 65.

20 34. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
21 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

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

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

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1 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
2 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
3 ingestion.

4 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
5 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
6 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for
7 sale or use to individuals in California.

8 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
9 consumers and other individuals in California who were or who would become exposed to the
10 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable
11 uses of the PRODUCTS.

12 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
13 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
14 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
15 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
16 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

17 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
18 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each
19 violation.

20 42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
21 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures 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: June 3, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 
Jonathan A. Bornstein
Attorneys for Plaintiff
LAURENCE VINOCUR