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(ENDORSED)
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CLERK OF SUPERIOR COURT
COUNTY OF SANTA CLARA
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10
11 SAFE PRODUCTS FOR CALIFORNIANS,)
LLC,)
12)
13 Plaintiff,)
14 vs.)
15 SUNLIGHT SUPPLY, INC; DOES 1)
THROUGH 150, inclusive;)
16)
17 Defendants.)

No. **16CV291468**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.5, *et seq.*)

18
19 Plaintiff, SAFE PRODUCTS FOR CALIFORNIANS, LLC (“Plaintiff”), alleges as
20 follows:

21 SUMMARY

22 1. This is a representative action brought by Plaintiff in the public interest of the
23 citizens of the State of California to enforce the public’s right to be informed of the health
24 hazards caused by exposures to di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical found
25 in and on the products manufactured, distributed, and/or sold by Defendants, SUNLIGHT
26 SUPPLY, INC. and DOES 1 THROUGH 150, inclusive (“Defendants”), as set forth below.

27 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
28 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code

1 § 6300, *et seq.* (“OSHA”), who purchase, use, or handle Defendants’ products, about the risks
2 of exposure to DEHP present in and on the products manufactured, distributed, and sold
3 throughout the State of California. Individuals not covered by OSHA who purchase, use, or
4 handle Defendants’ products are referred to hereinafter as “Consumers.”

5 3. Detectable levels of DEHP are found in and on the clear flexible tubing that
6 Defendants manufacture, distributed, and/or offer for sale to Consumers throughout the State
7 of California.

8 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
9 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”), “[n]o person in the course of
10 doing business shall knowingly and intentionally expose any individual to a chemical known to
11 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
12 warning to such individual ...” Health & Safety Code § 25249.6.

13 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
14 DEHP as a chemical known to cause birth defects and reproductive harm. DEHP became
15 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
16 October 25, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

17 6. Defendants manufacture, distribute, import, sell, and offer for sale without
18 health warnings in the the State of California, clear flexible tubing that contain excessive levels
19 of DEHP including, but not limited to, “HydroFlow 3/16” Clear Tubing,” Product #708215,
20 UPC #8-47127-00094-6. All such products containing DEHP are referred to collectively
21 hereinafter as “Products.”

22 7. Defendants’ failure to warn Consumers in the State of California of the health
23 hazards associated with exposures to DEHP in conjunction with Defendants’ sales of the
24 Products are violations of Proposition 65, and subject Defendants, and each of them, to
25 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
26 § 25249.7(a) & (b)(1).

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1 8. For Defendants’ violations of Proposition 65, Plaintiff seeks preliminary and
2 permanent injunctive relief to compel Defendants to provide Consumers of the Products with
3 the required warning regarding the health hazards associated with exposures to DEHP. Health
4 & Safety Code § 25249.7(a).

5 9. Pursuant to Health & Safety Code § 25249.7(b), Plaintiff also seeks civil
6 penalties against Defendants for their violations of Proposition 65.

7 **JURISDICTION AND VENUE**

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

12 11. The California Superior Court has jurisdiction over Defendants based on
13 Plaintiff’s information and good faith belief that Defendants are each a person, firm,
14 corporation, or association that is a citizen of the State of California, has sufficient minimum
15 contacts in the State of California, and/or purposefully avails itself of the California market.
16 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California
17 courts consistent with traditional notions of fair play and substantial justice.

18 12. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to
19 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
20 jurisdiction, because Plaintiff seeks civil penalties against Defendants, because one or more
21 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
22 Defendants conducted, and continue to conduct, business in Santa Clara County with respect to
23 the Products.

24 **PARTIES**

25 13. Plaintiff is a limited liability California company with its principal place of
26 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
27 eliminate the presence of hazardous substances in consumer products sold in California, and to
28 ensure that California consumers are aware of the presence of such substances in consumer

1 goods so that they can make an educated effort to limit their own exposure where deemed
2 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
3 § 25249.7(d).

4 14. Defendant Sunlight Supply, Inc. (“Sunlight”) is a person in the course of doing
5 business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

6 15. Sunlight manufactures, imports, distributes, sells, and/or offers the Products for
7 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
8 distributes, sells, and/or offers the Products for sale or use in the State of California.

9 16. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer Defendants”),
10 are each a person in the course of doing business within the meaning of Health & Safety Code
11 §§ 25249.6 and 25249.11.

12 17. Manufacturer Defendants, and each of them, research, test, design, assemble,
13 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
14 assembles, fabricates, and manufactures, one or more of the Products offered for sale or use in
15 California.

16 18. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
17 are each a person in the course of doing business within the meaning of Health & Safety Code
18 §§ 25249.6 and 25249.11.

19 19. Distributor Defendants, and each of them, distribute, exchange, transfer,
20 process, and transport one or more of the Products to individuals, businesses, or retailers for
21 sale or use in the State of California, or each implies by its conduct that it distributes,
22 exchanges, transfers, processes, and transports one or more of the Products to individuals,
23 businesses, or retailers for sale or use in the State of California.

24 20. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
25 each a person in the course of doing business within the meaning of Health & Safety Code
26 §§ 25249.6 and 25249.11.

27 21. Retailer Defendants, and each of them, offer the Products for sale to individuals
28 in the State of California.

1 22. At this time, the true names of Defendants DOES 1 THROUGH 150, inclusive,
2 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names
3 pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis
4 alleges, that each of the fictitiously named defendants is responsible for the acts and
5 occurrences alleged herein. When ascertained, their true names shall be reflected in an
6 amended complaint.

7 **FIRST CAUSE OF ACTION**

8 **Violation of Proposition 65**

9 23. Plaintiff re-pleads and incorporates by reference the allegations contained in
10 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

11 24. Plaintiff is informed and believes, and on that basis alleges, that each of the
12 Defendants employs ten or more persons.

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

17 26. Proposition 65 states, “[no] person in the course of doing business shall
18 knowingly and intentionally expose any individual to a chemical known to the state to cause
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such
20 individual ...” Health & Safety Code § 25249.6.

21 27. On September 4, 2015, Plaintiff served a sixty-day notice of violation, including
22 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
23 least one person with relevant and appropriate expertise who reviewed relevant data regarding
24 the alleged exposures to DEHP and that counsel believed there was meritorious and reasonable
25 cause for a public action, on Sunlight, the California Attorney General’s Office, and the
26 requisite public enforcement agencies, alleging that, as a result of Defendants’ sales of the
27 Products, Consumers in the State of California are being exposed to DEHP resulting from their
28 reasonably foreseeable use of the Products, without the Consumers first receiving a “clear and

1 reasonable warning” regarding the harms associated with exposures to DEHP, as required by
2 Proposition 65.

3 28. Defendants manufacture, import, distribute, sell, and offer the Products for sale
4 or use in violation of Health & Safety Code § 25249.6, and Defendants’ violations have
5 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, Defendants’
6 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
7 future.

8 29. After receiving Plaintiff’s sixty-day notice of violation, and to Plaintiff’s best
9 information and belief, no public enforcement agency has commenced and diligently
10 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
11 violations that are the subject of Plaintiff’s notice of violation.

12 30. The Products that Defendants manufacture, import, distribute, sell, and offer for
13 sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use
14 of the Products. Such exposures caused by Defendants and endured by Consumers in
15 California are not exempt from the “clear and reasonable” warning requirements of Proposition
16 65, yet Defendants provide no clear and reasonable warning.

17 31. Defendants knew or should have known that the Products they manufacture,
18 import, distribute, sell, and offer for sale or use in California contain DEHP.

19 32. DEHP is present in or on the Products in such a way as to expose Consumers
20 through dermal contact, inhalation, and/or ingestion during reasonably foreseeable use.

21 33. The normal and reasonably foreseeable use of the Products has caused, and
22 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
23 of Regulations, section 25602(b).

24 34. Defendants know that the normal and reasonably foreseeable use of the
25 Products exposes individuals to DEHP through dermal contact, inhalation, and/or ingestion.

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1 35. Defendants intend that exposures to DEHP through the reasonably foreseeable
2 use of the Products will occur by their deliberate, non-accidental participation in the
3 manufacture, importation, distribution, sale, and offering of the Products for sale or use to
4 Consumers in California.

5 36. Defendants failed to provide a “clear and reasonable warning” to those
6 Consumers in California who have been, or will be, exposed to DEHP through dermal contact,
7 inhalation, and/or ingestion resulting from their use of the Products.

8 37. Contrary to the express policy and statutory prohibition of Proposition 65
9 enacted directly by California voters, consumers exposed to DEHP through dermal contact,
10 inhalation, and/or ingestion as a result of their use of the Products that Defendants sold without
11 a “clear and reasonable” health hazard warning have suffered, and continue to suffer,
12 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

13 38. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-
14 described acts, Defendants, and each of them, are liable for a maximum civil penalty of \$2,500
15 per day for each violation.

16 39. As a consequence of the above-described acts, Health & Safety Code
17 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
18 Defendants.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 21 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to
22 Health & Safety Code § 25249.7(b);
- 23 2. Preliminary and permanent injunctions mandating that Defendants recall all
24 Products currently in the chain of commerce in California without a “clear and
25 reasonable warning” as defined by California Code of Regulations title 27,
26 section 25601, *et seq.*;
- 27 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily
28 and permanently enjoin Defendants from manufacturing, distributing, or

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offering the Products for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601, *et seq.*, regarding the harms associated with DEHP;

- 4. Plaintiff’s reasonable attorney’s fees and costs of suit; and
- 5. For such other and further relief as the Court deems proper.

Dated: 2/10/2016

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