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ENDORSED
FILED
ALAMEDA COUNTY

APR 10 2017

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

KAREN CALACIN,

Plaintiff,

v.

NATIONAL STORES, INC. dba
FALLAS,

Defendant.

Case No.: **RG 17856 134**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code §25249.5
et seq.)**

Plaintiff Karen Calacin, by and through her attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

1. Plaintiff Karen Calacin ("Plaintiff" or "Calacin"), brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
4 belts, and travel/cosmetic bags/cases sold, distributed and/or purchased for sale by defendant
5 National Stores, Inc. dba Fallas (“Fallas” or “Defendant”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
8 known to the State to cause cancer and it has come under the purview of Proposition 65
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
11 known to cause reproductive toxicity.

12 4. Proposition 65 requires all businesses with ten (10) or more employees that
13 operate within California or sell products therein to comply with Proposition 65 regulations.
14 Included in such regulations is the requirement that businesses must label any product containing
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
16 intentionally” exposing any person to it.

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
20 the actions of a defendant which “violate[s] or threaten[s] to violate” the statute. Health &
21 Safety Code § 25249.7.

22 6. Plaintiff alleges that Defendant purchases for sale, distributes, imports, sells,
23 and/or offers for sale in California, without the required warning, belts, and travel/cosmetic
24 bags/cases, including but not limited to (1) Black Belt, UPC No. 00830912, Fallas Receipt:
25 830912, and (2) Perry Ellis Travel Kits, UPC No. 0 77979 83287 1 (the “Products”) that contain
26 DEHP.

27 7. Defendant’s failure to warn consumers and other individuals in California of the
28 health hazards associated with exposure to DEHP in conjunction with the sale, and/or

1 distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendant to provide purchasers or users of the Product with the required warnings related to the
7 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
8 Code § 25249.7(a).

9 PARTIES

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. He brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant Fallas, a California Corporation with more than 350 locations in
15 twenty-two states and Puerto Rico, purchases for sale, imports, distributes, sells, and/or offers the
16 Products for sale or use in the State of California, or it implies by its conduct that it
17 manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of
18 California. Defendant Fallas maintains a registered agent for service of process at c/o Michael
19 Fallas, 15001 S. Figueroa Street, Gardena, CA 90248.

20 12. Defendant Fallas is a “person” in the course of doing business within the meaning
21 of Health & Safety Code sections 25249.6 and 25249.11.

22 VENUE AND JURISDICTION

23 13. Venue is proper in the County of Alameda because one or more of the instances
24 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
25 conducted, and continues to conduct, business in the County of Alameda with respect to the
26 Product.

27 14. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

4 15. This Court has jurisdiction over Defendant because it is either a citizen of the
5 State of California, has sufficient minimum contacts with the State of California, is registered
6 with the California Secretary of State as foreign corporations authorized to do business in the
7 State of California, and/or has otherwise purposefully availed itself of the California market.
8 Such purposeful availment has rendered the exercise of jurisdiction by California courts
9 consistent and permissible with traditional notions of fair play and substantial justice.

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 16. On November 18, and on December 16, 2016, Plaintiff gave notice of alleged
12 violation of Health and Safety Code § 25249.6 (collectively, the “Notices”) to Fallas concerning
13 the exposure of California citizens to DEHP contained in the Products without proper warning,
14 subject to a private action to Fallas and to the California Attorney General’s office and the
15 offices of the County District attorneys and City Attorneys for each city with a population
16 greater than 750,000 persons wherein the herein violations allegedly occurred.

17 17. The Notices complied with all procedural requirements of Proposition 65
18 including the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted
19 with at least one person with relevant and appropriate expertise who reviewed relevant data
20 regarding DEHP exposure, and that counsel believed there was meritorious and reasonable cause
21 for a private action.

22 18. After receiving the Notices, and to Plaintiff’s best information and belief, none of
23 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
24 a cause of action against Fallas under Proposition 65 to enforce the alleged violations which are
25 the subject of Plaintiff’s notice of violation.

26 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
27 Notices to Fallas, as required by law.

28

1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

3 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
4 this complaint as though fully set forth herein.

5 21. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer
6 of the Products.

7 22. The Products contain DEHP, a hazardous chemical found on the Proposition 65
8 list of chemicals known to be hazardous to human health.

9 23. The Products do not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on her best information and belief, avers that at all relevant times
11 herein, and at least since November 1, 2016 continuing until the present, that Fallas has
12 continued to knowingly and intentionally expose California users and consumers of the Products
13 to DEHP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notices result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals in the travel/cosmetic bags/cases is through dermal dermal
17 absorption through direct contact. Users may potentially be exposed to DEHP by dermal
18 absorption through direct skin contact with the interior of the travel bag during routine use when
19 the bag is manipulated with bare hands. The product can be expected to emit gas phase DEHP
20 into the air over the lifetime of the product. Concentrations of gas phase DEHP can be expected
21 to building within the small, enclosed interior of the travel bag. This gas phase DEHP can
22 potentially be absorbed to the surface of the interior contents which, according to the
23 manufacturer's label include "travel essentials or electronics and cords." When handled, these
24 items can provide an indirect source of dermal transfer of DEHP to the user's hands when the
25 contents are grasped with bare hands. Should the user manipulate the travel bag or contaminated
26 inner contents with wet hands, or the travel bag or its contents become wet, aqueous DEHP skin
27 permeation rates are faster than neat DEHP permeation. For instance, exposure to low molecular
28 weight phthalates was reported in urinary metabolites after male showering. If the travel bag is

1 stored or transported in a carrier, DEHP that leaches from the travel bag may contaminate other
2 articles contained within the carrier bag that are subsequently handled or worn by the user.
3 Finally, while mouthing of the product does not seem likely, some amount of exposure through
4 ingestion can occur by touching the product with subsequent touching of the user's hand to
5 mouth, or if the interior contents of one of the containers is contaminated with DEHP and comes
6 into contact with the user's mouth.

7 26. The primary route of exposure to these chemicals in the belts is through direct
8 skin exposure. Direct dermal exposure through the hands is likely to occur when the user puts on
9 or takes off the belt. Indirect exposure is likely to occur through the transfer of DEHP to articles
10 of clothing that the belt comes into contact with and subsequent handling of contaminated
11 clothing by the user. Finally, while mouthing of the product does not seem likely, some amount
12 of exposure through ingestion can occur by handling the product during use with subsequent
13 touching of the user's hands to mouth.

14 27. Plaintiff, based on her best information and belief, avers that such exposures will
15 continue every day until clear and reasonable warnings are provided to purchasers of the
16 Products and users or until this known toxic chemical is removed from the Products.

17 28. Defendant has knowledge that the normal and reasonably foreseeable use of the
18 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will
19 occur by their deliberate, non-accidental participation in the manufacture, importation,
20 distribution, sale and offering of the Products to consumers in California

21 29. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
22 Complaint.

23 30. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
24 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

25 31. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
26 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

27 **PRAYER FOR RELIEF**

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WHEREFORE, Plaintiff demands judgment against Defendant and requests the following relief:

- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: April 10, 2017

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