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**FILED**  
San Francisco County Superior Court

AUG 16 2017

CLERK OF THE COURT  
BY: Sandra Schie  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

13 LAURENCE VINOUCUR,

14 Plaintiff,

15 v.

16 RUSTICO LLC; and DOES 1 – 150, inclusive,

17 Defendants.

Case No. **CGC-17-560768**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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FAXED





1 person in the course of doing business within the meaning of Health and Safety Code sections  
2 25249.6 and 25249.11.

3 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
4 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,  
5 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for  
6 sale or use in California.

7 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
8 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
9 and 25249.11.

10 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
11 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
12 retailers for sale or use in the State of California, or each implies by its conduct that it  
13 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to  
14 individuals, businesses, or retailers for sale or use in the State of California.

15 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
16 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
17 and 25249.11.

18 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
19 individuals in the State of California.

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

25 20. RUSTICO, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be  
27 referred to collectively as the "DEFENDANTS."  
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual . . . .” Health & Safety Code § 25249.6.

3 27. On April 27, 2017, Plaintiff served a sixty-day notice of violation, together with  
4 the accompanying certificate of merit, on RUSTICO, the California Attorney General’s Office,  
5 and the requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales  
6 of the PRODUCTS, consumers in the State of California are being exposed to DEHP resulting  
7 from their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving  
8 a “clear and reasonable warning” regarding the harms associated with exposures to DEHP, as  
9 required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As  
13 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined  
14 will continue in the future.

15 29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement  
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
17 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
18 violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
20 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
22 consumers in California are not exempt from the “clear and reasonable” warning requirements  
23 of Proposition 65, yet DEFENDANTS provide no warning.

24 31. DEFENDANTS knew or should have known that the PRODUCTS they  
25 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

26 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
27 through dermal contact and/or ingestion during reasonably foreseeable use.  
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1           33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
2 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
3 of Regulations, section 25602(b).

4           34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
5 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

6           35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
7 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
8 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
9 consumers in California.

10           36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
11 consumers in California who have been, or who will be, exposed to DEHP through dermal  
12 contact and/or ingestion resulting from their use of the PRODUCTS.

13           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
14 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
15 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear  
16 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
17 for which they have no plain, speedy, or adequate remedy at law.

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

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

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