

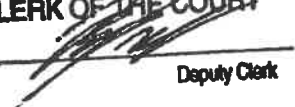
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FILED
San Francisco County Superior Court

NOV 03 2017

CLERK OF THE COURT
BY: 
Deputy Clerk

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

CBC - 17 - 562298

LAURENCE VINOUCUR,

Plaintiff,

v.

AIRGAS, INC.; and DOES 1 – 150, inclusive,

Defendants.

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

FILED

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff LAURENCE
3 VINOCUR in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of: (a) the health hazards caused by exposures to di(2-ethylhexyl) phthalate
5 (“DEHP”), and lead, which are toxic chemicals found in and on vinyl/PVC tool pouches sold by
6 Defendants in California, and (b) the health hazards caused by exposures to diisononyl phthalate
7 (“DINP”), a toxic chemical found in and on vinyl/PVC cords sold by Defendants in California.

8 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
9 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
10 section 6300 et seq., who purchase, use or handle Defendants’ products, about the risks of
11 exposure to: (a) DEHP and lead present in and on vinyl/PVC tool pouches manufactured,
12 distributed, and offered for sale or use throughout the State of California, and (b) DINP present
13 in and on vinyl/PVC cords manufactured, distributed, and offered for sale or use throughout the
14 State of California. Individuals not covered by California’s Occupational Safety Health Act,
15 Labor Code section 6300 et seq., who purchase, use or handle Defendants’ products, are
16 referred to hereinafter as “consumers.”

17 3. Detectable levels of DEHP and lead are found in and on the vinyl/PVC tool
18 pouches that Defendants manufacture, distribute, and offer for sale to consumers throughout the
19 State of California. Detectable levels of DINP are found in and on the vinyl/PVC cords that
20 Defendants manufacture, distribute, and offer for sale to consumers throughout the State of
21 California.

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

1 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
2 lead as a chemical known to cause birth defects or other reproductive harm. Lead became
3 subject to the “clear and reasonable warning” requirements of the act one year later on February
4 27, 1988. (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
5 25249.10(b).)

6 6. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
7 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
8 subject to the “clear and reasonable warning” requirements of the act one year later on October
9 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
10 25249.10(b).

11 7. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
12 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
13 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
14 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

15 8. Defendants manufacture, distribute, import, sell, and offer for sale without health
16 hazard warnings in California: (a) vinyl/PVC tool pouches that contain DEHP and lead
17 including, but not limited to, *the Randor Telescopic Mirror, Part Number RAD64002361, UPC*
18 *#6 39890 02361 7*, and (b) vinyl/PVC cords that contain DINP including, but not limited to, *the*
19 *Randor Portable GFCI Cord Set, Part 64006321, UPC #6 39890 06321 7*. All such vinyl/PVC
20 tool pouches containing DEHP and lead, and all such vinyl/PVC cords containing DINP are
21 referred to collectively hereinafter as “PRODUCTS.” DEHP, lead and DINP are referred to
22 collectively hereinafter as the LISTED CHEMICALS.

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

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1 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
2 retailers for sale or use in the State of California, or each implies by its conduct that it
3 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
4 individuals, businesses, or retailers for sale or use in the State of California.

5 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
6 the course of doing business within the meaning of Health and Safety Code sections 25249.6
7 and 25249.11.

8 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
9 individuals in the State of California.

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

15 22. AIRGAS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
17 referred to collectively as the “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

19 23. Venue is proper in the Superior Court for the County of San Francisco, pursuant
20 to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
21 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
22 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
23 and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco
24 with respect to the PRODUCTS.

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

3 25. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm,
5 corporation or association that is a citizen of the State of California, has sufficient minimum
6 contacts in the State of California, and/or otherwise purposefully avails itself of the California
7 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

11 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 25, inclusive.

13 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
14 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 28. Proposition 65 states, “[n]o 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 29. On June 29, 2017, Plaintiff served a sixty-day notice of violation, together with
22 the accompanying certificate of merit, on AIRGAS, the California Attorney General’s Office,
23 and the requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales
24 of the PRODUCTS, consumers in the State of California are being exposed to the LISTED
25 CHEMICALS resulting from their reasonably foreseeable use of the PRODUCTS, without the
26 consumers first receiving a “clear and reasonable warning” regarding the harms associated with
27 exposures to the LISTED CHEMICALS, as required by Proposition 65.

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1 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
2 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
3 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation. As
4 such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined
5 will continue in the future.

6 31. After receiving Plaintiff's sixty-day notice of violation, no public enforcement
7 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
8 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of
9 violation.

10 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
11 offer for sale or use in California cause exposures to the LISTED CHEMICALS as a result of
12 the reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS
13 and endured by consumers in California are not exempt from the "clear and reasonable"
14 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

15 33. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufacture, import, distribute, sell, and offer for sale in California contain the LISTED
17 CHEMICALS.

18 34. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
19 to expose consumers through dermal contact and/or ingestion during reasonably foreseeable
20 use.

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

24 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
25 PRODUCTS exposes individuals to the LISTED CHEMICALS through dermal contact and/or
26 ingestion.

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1 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
2 25601 *et seq.*, regarding the harms associated with exposures to the LISTED CHEMICALS;

3 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
4 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
5 currently in the chain of commerce in California without a “clear and reasonable warning” as
6 defined by California Code of Regulations title 27, section 25601 *et seq.*;

7 4. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

8 5. That the Court grant such other and further relief as may be just and proper.

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10 Dated: November 3, 2017

Respectfully submitted,
THE CHANLER GROUP

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By: 

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Christopher F. Tuttle
Attorneys for Plaintiff
LAURENCE VINOCUR

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