

FILED

OCT 19 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hernandez, Deputy

Brian C. Johnson, State Bar No. 235965
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
brian@chanler.com
josh@chanler.com

Attorneys for Plaintiff
LAURENCE VINOCUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR,

Plaintiff,

v.

NEET PRODUCTS, INC.; BASS PRO, LLC.;
and DOES 1 – 15, inclusive,

Defendants.

Case No.

CIV 1703887

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, vinyl/PVC quivers that contain DEHP including, but not limited

1 to, *Target Quiver, N-613, #06100, UPC #0 46821 06100 4*. All such vinyl/PVC quivers
2 containing DEHP are referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers in the State of California of the health
4 hazards associated with exposures to DEHP in conjunction with Defendants' sales of the
5 PRODUCTS are violations of Proposition 65, and subject Defendants, and each of them, to
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
7 § 25249.7(a) & (b)(1).

8 8. For Defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel Defendants to provide consumers of the PRODUCTS
10 with the required warning regarding the health hazards associated with exposures to DEHP.
11 Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil
13 penalties against defendants for their violations of Proposition 65.

14 PARTIES

15 10. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
16 dedicated to protecting the health of California citizens through the elimination or reduction of
17 toxic exposures from consumer products; and he brings this action in the public interest
18 pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant NEET PRODUCTS, INC. ("NEET PRODUCTS") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

22 12. NEET PRODUCTS manufactures, imports, distributes, sells, and/or offers the
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
24 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
25 State of California.

26 13. Defendant BASS PRO, LLC ("BASS PRO") is a person in the course of doing
27 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
28

1 14. BASS PRO manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 15. Defendants DOES 1-5 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code sections
7 25249.6 and 25249.11.

8 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
9 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
10 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
11 sale or use in California.

12 17. Defendants DOES 6-10 (“DISTRIBUTOR DEFENDANTS”) are each a person in
13 the course of doing business within the meaning of Health and Safety Code sections 25249.6
14 and 25249.11.

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

20 19. Defendants DOES 11-15 (“RETAILER DEFENDANTS”) are each a person in
21 the course of doing business within the meaning of Health and Safety Code sections 25249.6
22 and 25249.11.

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

25 21. At this time, the true names of defendants DOES 1 through 15, inclusive, are
26 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
27 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
28 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences

1 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

2 22. NEET PRODUCTS, BASS PRO, MANUFACTURER DEFENDANTS,
3 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where
4 appropriate, be referred to collectively as the "DEFENDANTS."

5 **VENUE AND JURISDICTION**

6 23. Venue is proper in the Superior Court for the County of Marin pursuant to Code
7 of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
8 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
9 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
10 DEFENDANTS conducted, and continue to conduct, business in Marin with respect to the
11 PRODUCTS.

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

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

22 **FIRST CAUSE OF ACTION**

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

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

26 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
27 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be
28

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

3 28. Proposition 65 states, “[n]o person in the course of doing business shall
4 knowingly and intentionally expose any individual to a chemical known to the state to cause
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such
6 individual” Health & Safety Code § 25249.6.

7 29. On June 29, 2017, Plaintiff served a sixty-day notice of violation, together with
8 the accompanying certificate of merit, on NEET PRODUCTS, BASS PRO, the California
9 Attorney General’s Office, and the requisite public enforcement agencies alleging that, as a
10 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are
11 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,
12 without the consumers first receiving a “clear and reasonable warning” regarding the harms
13 associated with exposures to DEHP, as required by Proposition 65.

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

19 31. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
20 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
21 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
22 violation.

23 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
24 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
25 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
26 consumers in California are not exempt from the “clear and reasonable” warning requirements
27 of Proposition 65, yet DEFENDANTS provide no warning.
28

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

3 34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
4 through dermal contact and/or ingestion during reasonably foreseeable use.

5 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
6 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
7 of Regulations, section 25602(b).

8 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

10 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
11 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
12 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
13 consumers in California.

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

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

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

25 41. As a consequence of the above-described acts, Health and Safety Code
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 DEFENDANTS.
28

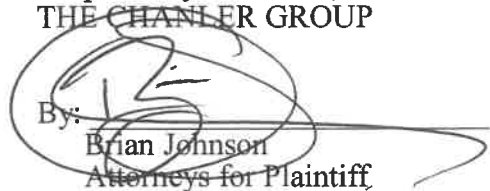
1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

- 3 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
4 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
5 each violation;
- 6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;
- 11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;
- 15 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
16 5. That the Court grant such other and further relief as may be just and proper.
- 17

18 Dated: October 11, 2017

Respectfully submitted,
THE CHANLER GROUP

20 By: 

21 Brian Johnson
Attorneys for Plaintiff
22 LAURENCE VINOCUR
23
24
25
26
27
28