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Superior Court of CA,
County of Santa Clara
18CV328048
Reviewed By: A. Hwang

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

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SAFE PRODUCTS FOR CALIFORNIANS, LLC,)	No. 18CV328048
Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
vs.)	(Health & Safety Code § 25249.5, <i>et seq.</i>)
BASS PRO OUTDOOR WORLD L.L.C.;)	
DOES 1 THROUGH 150, inclusive;)	
Defendants.)	

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

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SUMMARY

1. This is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the public’s right to be informed of the health hazards caused by exposures to diisononyl phthalate (“DINP”), a toxic chemical found in and on the products manufactured, distributed, and/or sold by Defendants, BASS PRO OUTDOOR WORLD L.L.C.; and DOES 1 THROUGH 150, inclusive (collectively “Defendants”), as set

1 forth below.

2 2. By this Complaint, Plaintiff seeks to remedy Defendants' continuing failure to
3 warn individuals not covered by California's Occupational Safety Health Act, Labor Code
4 § 6300, *et seq.* ("OSHA"), who purchase, use, or handle Defendants' products, about the risks
5 of exposure to DINP present in and on the products manufactured, distributed, and sold
6 throughout the State of California. Individuals not covered by OSHA who purchase, use, or
7 handle Defendants' products are referred to hereinafter as "Consumers."

8 3. Detectable levels of DINP are found in and on the soft plastic lures that
9 Defendants manufacture, distribute, and/or offer for sale to Consumers throughout the State of
10 California.

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

16 5. Defendants manufacture, distribute, import, sell, and offer for sale without
17 health warnings in the State of California, soft plastic lures that contain excessive levels of
18 DINP including, but not limited to, "Sep's Pro Grubs Size 3 Amber" UPC# 097969526009. All
19 such products containing DINP are referred to collectively hereinafter as "Products."

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

25 7. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary and
26 permanent injunctive relief to compel Defendants to provide Consumers of the Products with
27 the required warning regarding the health hazards associated with exposures to DINP. Health
28 & Safety Code § 25249.7(a).

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

3 **JURISDICTION AND VENUE**

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

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

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

20 **PARTIES**

21 12. Plaintiff is a limited liability California company with its principal place of
22 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
23 eliminate the presence of hazardous substances in consumer products sold in California, and to
24 ensure that California consumers are aware of the presence of such substances in consumer
25 goods so that they can make an educated effort to limit their own exposure where deemed
26 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
27 § 25249.7(d).

28 13. Defendant BASS PRO OUTDOOR WORLD L.L.C. is a person in the course of

1 doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

2 14. Defendants manufacture, import, distribute, sell, and/or offer the Products for
3 sale or use in the State of California, or imply by their conduct that they manufacture, import,
4 distribute, sell, and/or offer the Products for sale or use in the State of California.

5 15. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer Defendants”),
6 are each a person in the course of doing business within the meaning of Health & Safety Code
7 §§ 25249.6 and 25249.11.

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

12 17. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
13 are each a person in the course of doing business within the meaning of Health & Safety Code
14 §§ 25249.6 and 25249.11.

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

20 19. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
21 each a person in the course of doing business within the meaning of Health & Safety Code
22 §§ 25249.6 and 25249.11.

23 20. Retailer Defendants, and each of them, offer the Products for sale to individuals
24 in the State of California.

25 21. At this time, the true names of Defendants DOES 1 THROUGH 150, inclusive,
26 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names
27 pursuant to Code of Civil Procedure § 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

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

3 **FIRST CAUSE OF ACTION**

4 **Violation of Proposition 65**

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

7 23. Plaintiff is informed and believes, and on that basis alleges, that each of the
8 Defendants employs ten or more persons.

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

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

17 26. On September 21, 2017, Plaintiff served a sixty-day notice of violation,
18 including the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had
19 consulted with at least one person with relevant and appropriate expertise who reviewed
20 relevant data regarding the alleged exposures to DINP and that counsel believed there was
21 meritorious and reasonable cause for a public action, on Defendant BASS PRO OUTDOOR
22 WORLD L.L.C., the California Attorney General’s Office, and the requisite public
23 enforcement agencies, alleging that, as a result of Defendants’ sales of the Products,
24 Consumers in the State of California are being exposed to DINP resulting from their
25 reasonably foreseeable use of the Products, without the Consumers first receiving a “clear and
26 reasonable warning” regarding the harms associated with exposures to DINP, as required by
27 Proposition 65.

28 27. Defendants manufacture, import, distribute, sell, and offer the Products for sale

1 or use in violation of Health & Safety Code § 25249.6, and Defendants' violations have
2 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, Defendants'
3 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
4 future.

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

9 29. The Products that Defendants manufacture, import, distribute, sell, and offer for
10 sale or use in California cause exposures to DINP as a result of the reasonably foreseeable use
11 of the Products. Such exposures caused by Defendants and endured by Consumers in
12 California are not exempt from the "clear and reasonable" warning requirements of Proposition
13 65, yet Defendants provide no clear and reasonable warning.

14 30. Defendants knew or should have known that the Products they manufacture,
15 import, distribute, sell, and offer for sale or use in California contain DINP.

16 31. DINP is present in or on the Products in such a way as to expose Consumers
17 through dermal contact, and/or ingestion during reasonably foreseeable use.

18 32. The normal and reasonably foreseeable use of the Products has caused, and
19 continues to cause, consumer exposures to DINP, as defined by title 27 of the California Code
20 of Regulations, section 25602(b).

21 33. Defendants know that the normal and reasonably foreseeable use of the
22 Products exposes individuals to DINP through dermal contact, and/or ingestion.

23 34. Defendants intend that exposures to DINP through the reasonably foreseeable
24 use of the Products will occur by their deliberate, non-accidental participation in the
25 manufacture, importation, distribution, sale, and offering of the Products for sale or use to
26 Consumers in California.

27 35. Defendants failed to provide a "clear and reasonable warning" to those
28 Consumers in California who have been, or will be, exposed to DINP through dermal contact,

1 inhalation, and/or ingestion resulting from their use of the Products.

2 36. Contrary to the express policy and statutory prohibition of Proposition 65
3 enacted directly by California voters, consumers exposed to DINP through dermal contact,
4 and/or ingestion as a result of their use of the Products that Defendants sold without a “clear
5 and reasonable” health hazard warning have suffered, and continue to suffer, irreparable harm
6 for which they have no plain, speedy, or adequate remedy at law.

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

10 38. As a consequence of the above-described acts, Health & Safety Code
11 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
12 Defendants.

13 **PRAYER FOR RELIEF**

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

- 15 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to
16 Health & Safety Code § 25249.7(b);
- 17 2. Preliminary and permanent injunctions mandating that Defendants recall all
18 Products currently in the chain of commerce in California without a “clear and
19 reasonable warning” as defined by California Code of Regulations title 27,
20 section 25601, *et seq.*;
- 21 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily
22 and permanently enjoin Defendants from manufacturing, distributing, or
23 offering the Products for sale or use in California without first providing a
24 “clear and reasonable warning” in accordance with title 27 of the California
25 Code of Regulations, section 25601, *et seq.*, regarding the harms associated with
26 DINP;
- 27 4. Plaintiff’s reasonable attorney’s fees and costs of suit; and

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5. For such other and further relief as the Court deems proper.

Dated: 5/10/18

MISSION LAW FIRM A.P.C.

Tanya Moore
Tanya E. Moore
Attorney for Plaintiff
Safe Products for Californians, LLC