

ENDORSED
FILED
ALAMEDA COUNTY
JUL 25 2018
CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA *RC* 18914273

11 HECTOR VELARDE,
12 Plaintiff,
13 vs.
14 BEST ACCESSORY GROUP
15 ACQUISITION, LLC,
16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

BY FAX

17 Plaintiff Hector Velarde ("Plaintiff"), by and through his attorneys, alleges the following
18 cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People's right to be informed of the health
27 hazards caused by exposure to diisononyl phthalate (DINP) and/or di(2-ethylhexyl) phthalate
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1 (DEHP), toxic chemicals found in plastic bags/cases sold and/or distributed by defendant Best
2 Accessory Group Acquisition, LLC (“Best Accessory Group” or “Defendant”) in California.

3 3. DINP and DEHP are both harmful chemicals known to the State of California to
4 cause cancer and, in the case of DEHP, reproductive toxicity as well. On December 20, 2013,
5 and on January 1, 1988, the State of California listed DINP and DEHP, respectively, as
6 chemicals known to the State to cause cancer and each chemical has come under the purview of
7 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
8 Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a
9 chemical known to cause reproductive toxicity.

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

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

20 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
21 California, without a requisite exposure warning (a) Tuscan Hills Spa Bag Sets and/or clear
22 plastic bags and/or cases sold under the Tuscan Hills name or trademark, and (b) Color Rush My
23 Beauty Spot Rubber Hair Rollers Sets and/or clear plastic bags and/or cases sold under the Color
24 Rush My Beauty Spot name or trademark (the “Products”) that expose persons to DEHP and/or
25 DINP.

26 7. Defendant’s failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to DEHP and DINP in conjunction with the sale and/or
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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 Products with required warnings related to the
7 dangers and health hazards associated with exposure to DEHP and DINP pursuant to Health and
8 Safety 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 Best Accessory Group, through its business, effectively manufactures,
15 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or
16 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the
17 Products for sale or use in the State of California.

18 12. Plaintiff alleges that defendant Best Accessory Group is a “person” in the course
19 of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

20 **VENUE AND JURISDICTION**

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

25 14. This Court has jurisdiction over this action pursuant to California Constitution
26 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
27 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
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1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

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

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On May 15, 2018, Plaintiff gave notice of alleged violation of Health and Safety
11 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
12 DEHP and DINP contained in the Products without proper warning, subject to a private action to
13 Defendant and to the California Attorney General's office and the offices of the County District
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons
15 wherein the herein violations allegedly occurred.

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

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

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

27 **FIRST CAUSE OF ACTION**

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

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

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

5 22. The Products contain DEHP and DINP, hazardous chemicals found on the
6 Proposition 65 list of chemicals known to be hazardous to human health.

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

8 24. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since December 14, 2017 with respect to the Tuscan Hills bags/cases, and at
10 least since March 26, 2018, with respect to the Color Rush My Beauty Spot bags/cases,
11 continuing until the present, that Defendant has continued to knowingly and intentionally expose
12 California users and consumers of the Products to DEHP and/or DINP without providing
13 required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notice 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 Tuscan Hills bags/cases is through dermal absorption. Users
17 may potentially be exposed to DEHP by dermal absorption through direct skin contact with the
18 clear plastic case during routine use when the case is manipulated with bare hands.
19 Concentrations of gas phase DEHP can be expected to build within the zippered, enclosed
20 interior of the case. This DEHP can potentially be absorbed to the surface of the interior
21 contents, including but not limited to the spa products and towel included, that are subsequently
22 handled, held or placed in direct contact with skin, mouthed, or ingested by the user. Should the
23 user manipulate the case or contaminated inner contents with wet hands, aqueous DEHP skin
24 permeation rates are faster than neat DEHP permeation. If the case is stored or transported in a
25 carrier, DEHP that leaches from the clear plastic may contaminate other articles contained within
26 these closed spaces that are subsequently handled, worn, or ingested by the user. Finally, while
27 mouthing of the product does not seem likely, some amount of exposure through ingestion can
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1 occur by touching the product with subsequent touching of the user's hand to mouth, if the
2 contaminated inner contents come into contact with the user's mouth or are consumed.

3 26. The primary route of exposure to these chemicals in the Color Rush My Beauty
4 Spot bags/cases is through dermal absorption. User's may potentially be exposed to DEHP and
5 DINP by dermal absorption through direct skin contact with the storage bag during routine use
6 when the bag is grasped, opened, or manipulated with bare hands. Concentrations of gas phase
7 DEHP and DINP can potentially be absorbed to the surface of the interior contents which
8 includes hair rollers. When used to curl hair, these rollers can provide an indirect source of
9 dermal transfer of DEHP and DINP to the user's hands or scalp. If the rollers are placed in wet
10 hair and are in contact with the scalp, aqueous DEHP skin permeation rates have been reported
11 to be faster than neat DEHP permeation. If the zippered storage bag for the rollers is stored or
12 transported in a carrier storage area, DEHP and DINP that leaches from the plastic case may
13 contaminate other articles contained within the carrier but that are subsequently handled, worn,
14 mouthed, or consumed. Finally, while mouthing of the product does not seem likely, some
15 amount of exposure through ingestion can occur by touching the product with subsequent
16 touching of the user's hand to mouth.

17 27. Plaintiff, based on his best information and belief, avers that such exposures will
18 continue every day until clear and reasonable warnings are provided to Product purchasers and
19 users or until this known toxic chemical is removed from the Product.

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

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

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

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