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Safe Products for Californians, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SAFE PRODUCTS FOR CALIFORNIANS, LLC,)	No. 18CV335034
)	
Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES
)	AND INJUNCTIVE RELIEF
vs.)	
)	(Health & Safety Code § 25249.5, <i>et seq.</i>)
GENE LAREW LURES LLC; BASS PRO)	
OUTDOOR WORLD, L.L.C.; BRIAN J.)	
KELLER OUTDOORS, LLC; FISHUSA,)	
INC.; AMAZON.COM, INC.; DOES 1 - 150,)	
inclusive;)	
)	
Defendants.)	

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

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 diisodecyl phthalate ("DIDP") and diisononyl phthalate ("DINP"), toxic chemicals found in and on the products manufactured, distributed, and/or sold by Defendants, GENE LAREW LURES LLC; BASS PRO OUTDOOR WORLD, L.L.C.;

1 BRIAN J. KELLER OUTDOORS, LLC; FISHUSA, INC.; and AMAZON.COM, INC.; and
2 DOES 1 - 150, inclusive (collectively “Defendants”), as set forth below.

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

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

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

17 5. Pursuant to Proposition 65, on April 20, 2007, California identified and listed
18 DIDP as a chemical known to cause birth defects and reproductive harm. DIDP became subject
19 to the “clear and reasonable warning” requirements of Proposition 65 one year later on April
20 20, 2008. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

21 6. Pursuant to Proposition 65, on December 20, 2013, California identified and
22 listed DINP as a chemical known to cause cancer. DINP became subject to the “clear and
23 reasonable warning” requirements of Proposition 65 one year later on December 20, 2014. Cal.
24 Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

25 7. Defendants manufacture, distribute, import, sell, and offer for sale without
26 health warnings in the State of California, soft plastic lures that contain excessive levels of
27 DIDP and/or DINP including, but not limited to, “Gene Larew Biffle Bug Jr.,” UPC#
28 097817969859; “Gene Larew Biffle Bug Jr.,” UPC#097817971876; “Bobby Garland Itty Bit

Swim'r," UPC #097817972927; "Bobby Garland Baby Shad Swim'r," UPC# 097817972231; "Bobby Garland Baby Shad," UPC# 097817963512; "Bobby Garland Slab Slay'r," UPC# 097817963727; "Gene Larew Ned Rig Inch Worm," UPC# 09781797487; and "Gene Larew Biffle Bug," UPC# 097817969149. All such products containing DIDP and DINP are referred to collectively hereinafter as "Products."

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

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

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

JURISDICTION AND VENUE

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

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

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

PARTIES

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

15. Defendants GENE LAREW LURES LLC; BASS PRO OUTDOOR WORLD, L.L.C.; BRIAN J. KELLER OUTDOORS, LLC; FISHUSA, INC.; and AMAZON.COM, INC. are persons in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

Violation of Proposition 65

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

25. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendant employs ten or more persons.

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

1 harm.”

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

6 28. On June 5, 2018, Plaintiff served a sixty-day notice of violation, including the
7 attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
8 least one person with relevant and appropriate expertise who reviewed relevant data regarding
9 the alleged exposures to DIDP and DINP and that counsel believed there was meritorious and
10 reasonable cause for a public action, on Defendants GENE LAREW LURES LLC; BASS PRO
11 OUTDOOR WORLD, L.L.C.; BRIAN J. KELLER OUTDOORS, LLC; FISHUSA, INC.; and
12 AMAZON.COM, INC., the California Attorney General’s Office, and the requisite public
13 enforcement agencies, alleging that, as a result of Defendant’s sales of the Products,
14 Consumers in the State of California are being exposed to DIDP and DINP resulting from their
15 reasonably foreseeable use of the Products, without the Consumers first receiving a “clear and
16 reasonable warning” regarding the harms associated with exposures to DIDP and DINP, as
17 required by Proposition 65.

18 29. Defendants manufacture, import, distribute, sell, and offer the Products for sale
19 or use in violation of Health & Safety Code § 25249.6, and Defendants’ violations have
20 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, Defendants’
21 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
22 future.

23 30. After receiving Plaintiff’s sixty-day notice of violation, and to Plaintiff’s best
24 information and belief, no public enforcement agency has commenced and diligently
25 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
26 violations that are the subject of Plaintiff’s notice of violation.

27 31. The Products that Defendants manufacture, import, distribute, sell, and offer for
28 sale or use in California cause exposures to DIDP and DINP as a result of the reasonably

1 foreseeable use of the Products. Such exposures caused by Defendants and endured by
2 Consumers in California are not exempt from the “clear and reasonable” warning requirements
3 of Proposition 65, yet Defendants provide no clear and reasonable warning.

4 32. Defendants knew or should have known that the Products they manufacture,
5 import, distribute, sell, and offer for sale or use in California contain DIDP and DINP.

6 33. DIDP and DINP is present in or on the Products in such a way as to expose
7 Consumers through dermal contact, inhalation, and/or ingestion during reasonably foreseeable
8 use.

9 34. The normal and reasonably foreseeable use of the Products has caused, and
10 continues to cause, consumer exposures to DIDP and DINP, as defined by title 27 of the
11 California Code of Regulations, section 25602(b).

12 35. Defendants know that the normal and reasonably foreseeable use of the
13 Products exposes individuals to DIDP and DINP through dermal contact, inhalation, and/or
14 ingestion.

15 36. Defendants intend that exposures to DIDP and DINP through the reasonably
16 foreseeable use of the Products will occur by their deliberate, non-accidental participation in
17 the manufacture, importation, distribution, sale, and offering of the Products for sale or use to
18 Consumers in California.

19 37. Defendants failed to provide a “clear and reasonable warning” to those
20 Consumers in California who have been, or will be, exposed to DIDP and DINP through
21 dermal contact, inhalation, and/or ingestion resulting from their use of the Products.

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

27 39. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-
28 described acts, Defendants, and each of them, are liable for a maximum civil penalty of \$2,500

1 per day for each violation.

2 40. As a consequence of the above-described acts, Health & Safety Code
3 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
4 Defendants.

5 **PRAYER FOR RELIEF**

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

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

21 Dated: September 13, 2018

MISSION LAW FIRM, A.P.C.

23 Tanya Moore

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