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ENDORSED
FILED
San Francisco County Superior Court
DEC 17 2018
CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 LAURENCE VINOUCUR,

15 Plaintiff,

16 v.

17 BOSTON INTERNATIONAL
18 IMPORT/EXPORT, INC.; TUESDAY
19 MORNING CORPORATION; TUESDAY
20 MORNING, INC.; and DOES 1-150, inclusive,

21 Defendants.

22 Case No. CGC-18-572153

23 **COMPLAINT FOR CIVIL PENALTIES
24 AND INJUNCTIVE RELIEF**

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

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 the health hazards caused by exposures to di(2-ethylhexyl)phthalate
5 (DEHP), a toxic chemical found in and on vinyl luggage tags sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 *et seq.*, who purchase, use or handle defendants’ products, about the risks of
9 exposure to DEHP present in and on vinyl luggage tags that are manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 *et seq.*, who purchase,
12 use or handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of DEHP are found in and on vinyl luggage tags that defendants
14 manufacture, distribute, and offer for sale to consumers and other individuals throughout the
15 State of California.

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

21 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
22 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
23 subject to the “clear and reasonable warning” requirements of the act one year later on October
24 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
25 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
27 hazard warnings in California, vinyl luggage tags including, but not limited to, the
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1 *Boston International Vera Luggage Tag Lattice Green, CHA17174, #1887907, UPC #7 04266*
2 *02258* 4. All such vinyl luggage tags containing DEHP that are manufactured, distributed, sold,
3 or offered for sale by defendants in the State of California are referred to collectively hereinafter
4 as "PRODUCTS."

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

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

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

16 **PARTIES**

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

21 11. Defendant BOSTON INTERNATIONAL IMPORT/EXPORT, INC. (BOSTON
22 INTERNATIONAL) is a person in the course of doing business within the meaning of Health
23 and Safety Code sections 25249.6 and 25249.11.

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

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1 13. Defendant TUESDAY MORNING CORPORATION (TUESDAY MORNING
2 CORP.) is a person in the course of doing business within the meaning of Health and Safety
3 Code sections 25249.6 and 25249.11.

4 14. TUESDAY MORNING CORP. manufactures, imports, distributes, sells, and/or
5 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 15. Defendant TUESDAY MORNING, INC. (TUESDAY MORNING, INC.) is a
9 person in the course of doing business within the meaning of Health and Safety Code
10 sections 25249.6 and 25249.11.

11 16. TUESDAY MORNING, INC. manufactures, imports, distributes, sells, and/or
12 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
13 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
14 State of California.

15 17. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each a person
16 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
17 and 25249.11.

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

22 19. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each a person
23 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
24 and 25249.11.

25 20. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
26 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
27 retailers for sale or use in the State of California, or each implies by its conduct that it
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1 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
2 individuals, businesses, or retailers for sale or use in the State of California.

3 21. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each a person in
4 the course of doing business within the meaning of Health and Safety Code sections 25249.6
5 and 25249.11.

6 22. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
7 individuals in the State of California.

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

13 24. BOSTON INTERNATIONAL, TUESDAY MORNING CORP., TUESDAY
14 MORNING, INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
15 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively
16 as the "DEFENDANTS."

17 **VENUE AND JURISDICTION**

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

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

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1 32. 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 Notice. As such, DEFENDANTS'
4 violations are ongoing and continuous in nature and, unless enjoined will continue in the future.

5 33. After receiving plaintiff's Notice, no public enforcement agency has commenced
6 and diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to
7 enforce the alleged violations that are the subject of plaintiff's Notice.

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

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

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

17 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
18 continues to cause, consumer product exposures to DEHP, as defined by title 27 of the
19 California Code of Regulations, section 25600.1(e).

20 38. DEFENDANTS know that the normal and reasonably foreseeable use of the
21 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

22 39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
23 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
24 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
25 consumers in California.

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

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

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

12 43. As a consequence of the above-described acts, Health and Safety Code
13 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
14 DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25600 *et seq.*, regarding the harms associated with exposures to DEHP;
3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25600 *et seq.*;
4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: December 11, 2018

Respectfully submitted,
THE CHANLER GROUP

By: 
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Attorneys for Plaintiff
LAURENCE VINOUCUR