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**FILED**

APR 24 2019

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Segura, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF MARIN  
13 UNLIMITED CIVIL JURISDICTION

14 LAURENCE VINOUCUR,

15 Plaintiff,

16 v.

17 PRATT INDUSTRIES, INC.; PRATT RETAIL  
18 SPECIALTIES, LLC; THE HOME DEPOT,  
19 INC.; and DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 1901594

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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**BY FAX**

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 erasers sold by defendants in California.

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

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

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

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

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
25 hazard warnings in California, vinyl erasers including, but not limited to, the 3” x 5” *Erasable*  
26 *Labels (Eraser)*, UPC #8 17423 01818 1. All such vinyl erasers containing DEHP that are  
27 manufactured, distributed, sold, or offered for sale by defendants in the State of California are  
28 referred to collectively hereinafter as “PRODUCTS.”

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

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

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

12 **PARTIES**

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

17 11. Defendant PRATT INDUSTRIES, INC. (PRATT INDUSTRIES) is a person in the  
18 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
19 25249.11.

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

24 13. Defendant PRATT RETAIL SPECIALTIES, LLC (PRATT RETAIL) is a person in  
25 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
26 25249.11.

27 14. PRATT RETAIL manufactures, imports, distributes, sells, and/or offers the  
28 PRODUCTS for sale or use in the State of California, or implies by its conduct that it

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State  
2 of California.

3 15. Defendant THE HOME DEPOT, INC. (HOME DEPOT) is a person in the course  
4 of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

5 16. HOME DEPOT manufactures, imports, distributes, sells, and/or offers the  
6 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
7 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State  
8 of California.

9 17. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each a person in  
10 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
11 25249.11.

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

16 19. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each a person in  
17 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
18 25249.11.

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

24 21. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each a person in the  
25 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
26 25249.11.

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



1 **FIRST CAUSE OF ACTION**

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

3 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 27, inclusive.

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

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

12 31. On September 26, 2018, plaintiff served a 60-Day Notice of Violation, (the Notice),  
13 together with the requisite certificate of merit, on PRATT INDUSTRIES, PRATT RETAIL,  
14 HOME DEPOT, the California Attorney General’s Office, and the requisite public enforcement  
15 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the  
16 State of California are being exposed to DEHP resulting from their reasonably foreseeable use of  
17 the PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding  
18 the harms associated with exposures to DEHP, as required by Proposition 65.

19 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
20 sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’ violations  
21 have continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are  
22 ongoing and continuous in nature and, unless enjoined will continue in the future.

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

26 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
27 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
28 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by



1 consumers and other individuals in California are not exempt from the “clear and reasonable”  
2 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

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

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

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

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

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

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

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

24 42. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
25 above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of  
26 \$2,500 per day for each violation.

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