

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Laralei S. Paras, State Bar No. 203319
Katy M. Gasparini, State Bar No. 239388
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
laralei@chanler.com
katy@chanler.com

Attorneys for Plaintiff
LAURENCE VINO CUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,

Plaintiff,

v.

VIPAC INC.; BURLINGTON COAT
FACTORY DIRECT CORPORATION; and
DOES 1-150, inclusive,

Defendants.

Case No. _____
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

FILED
Superior Court Of California,
Sacramento
03/19/2019
amocanu
By _____, Deputy
Case Number:
34-2019-00252761

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 (DEHP),
5 a toxic chemical found in and on vinyl tote handles 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 *et*
8 *seq.*, about the risks of exposure to DEHP present in and on vinyl tote handles that are manufactured,
9 distributed, and offered for sale or use throughout the State of California. Individuals not covered by
10 California’s Occupational Safety Health Act, Labor Code section 6300 *et seq.*, who purchase, use or
11 handle defendants’ vinyl tote handles, are referred to hereinafter as “consumers.”

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

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

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

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
24 hazard warnings in California, vinyl tote handles including, but not limited to, the *Closet Complete*
25 *Storage & Organization Perfected Olivia Thomas Home Gold Triangle Tote, #52021-5, #80308 OC-*
26 *10*. All such vinyl tote handles containing DEHP that are manufactured, distributed, sold, or offered
27 for sale by defendants in the State of California are referred to collectively hereinafter as
28 “PRODUCTS.”

1 15. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each a person in
2 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

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

8 17. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each a person in the
9 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
10 25249.11.

11 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,
12 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale
13 or use in the State of California, or each implies by its conduct that it distributes, exchanges,
14 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or
15 retailers for sale or use in the State of California.

16 19. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each a person in the
17 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
18 25249.11.

19 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
20 individuals in the State of California.

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

26 22. VIPAC, BURLINGTON, MANUFACTURER DEFENDANTS, DISTRIBUTOR
27 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred
28 to collectively as the "DEFENDANTS."

1 VENUE AND JURISDICTION

2 23. Venue is proper in the Superior Court for the County of Sacramento pursuant to Code
3 of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
4 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
5 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
6 DEFENDANTS conducted, and continue to conduct, business in Sacramento with respect to the
7 PRODUCTS.

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

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

18 FIRST CAUSE OF ACTION

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

20 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 25, inclusive.

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

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

1 29. On September 26, 2018, plaintiff served a 60-Day Notice of Violation, the “Notice”,
2 together with the requisite certificate of merit, on VIPAC, BURLINGTON, the California Attorney
3 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
4 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being exposed
5 to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers
6 first receiving a “clear and reasonable warning” regarding the harms associated with exposures to
7 DEHP, as required by Proposition 65.

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

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

15 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
16 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of
17 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers are not
18 exempt from the “clear and reasonable” warning requirements of Proposition 65, yet
19 DEFENDANTS provide no warning.

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

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

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

27 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
28 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

1 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
2 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
3 currently in the chain of commerce in California without a “clear and reasonable warning” as
4 defined by California Code of Regulations title 27, section 25600 *et seq.*;

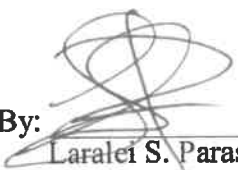
5 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

6 5. That the Court grant such other and further relief as may be just and proper.

7
8 Dated: March 18, 2019

Respectfully submitted,
THE CHANLER GROUP

9
10
11 By: _____


Laralei S. Paras
Attorneys for Plaintiff
LAURENCE VINOCUR