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CENTER FOR ADVANCED PUBLIC AWARENESS

FILED
San Francisco County Superior Court

MAY 24 2019

CLERK OF THE COURT
BY: *Sandra* *Shin*
Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

11 CENTER FOR ADVANCED PUBLIC
12 AWARENESS,
Plaintiff,

13 v.

14 DAISO CALIFORNIA LLC; and DOES 1-30,
15 inclusive,

16 Defendants.

Case No.

CGC-19-576244

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health & Safety Code § 25249.5 *et*
seq.)

Action is an Unlimited Civil Case

BY FAX
ONE LEGAL LLC

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public
2 interest, alleges a cause of action against Defendants DAISO CALIFORNIA LLC and DOES 1-
3 30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. This Complaint is a representative action brought by plaintiff CAPA in the public
6 interest of the citizens of the State of California to enforce the People’s right to be informed of the
7 health hazards caused by exposures to di(2-ethylhexyl)phthalate (DEHP), a toxic chemicals found
8 in and on: (a) the gloves with vinyl/PVC components; and (b) the vinyl/PVC cases, sold by
9 defendant in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
12 (“consumers”) that they are being exposed to substances known to the State of California to cause
13 cancer, birth defects and other reproductive harm through exposures to DEHP, present in and on
14 gloves with vinyl/PVC components and vinyl/PVC cases that are manufactured, distributed,
15 imported, marketed, sold and otherwise offered for sale or use throughout the State of California by
16 defendant and purchased, used or handled by consumers.

17 3. Detectable levels of DEHP are found in and on the gloves with vinyl/PVC
18 components and vinyl/PVC cases that defendant manufactures, imports, sells or distributes for sale
19 to consumers and other individuals throughout the State of California.

20 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified
21 at Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), it is unlawful for a person in the
22 course of doing business to knowingly and intentionally expose consumers in California to
23 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first
24 providing a “clear and reasonable” health hazard warning to such individuals prior to purchase or
25 use.

26 5. CAPA contends and alleges that Defendant manufactures, distributes, imports, sells,
27 and offers for sale, in or into California, products containing DEHP without Proposition 65’s
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1 requisite health hazard warning regarding the harms associated with exposures to the chemical, ,
2 but not limited to: (a) gloves with vinyl/PVC components, such as the *Daiso Cotton Gloves, Model*
3 *#CO29; No. 193, UPC #4 979909 865750*; and (b) vinyl/PVC cases, such as the *Daiso Romafille*
4 *Pen Case, Model # 323, KO01610, TL-47, UPC #4 549131 138825* (hereinafter, collectively, the
5 “PRODUCTS”).) Defendant’s conduct subjects them to civil penalties for each violation, as well
6 an enjoinder and preliminary and permanent injunctive relief. Health & Safety Code §§
7 25249.7(a) and (b).

8 **PARTIES**

9 6. Plaintiff CAPA is a non-profit organization organized under the laws of California
10 and acting in the interest of the general public, dedicated to protecting the health of California
11 citizens and the environment through the elimination or reduction of toxic chemicals utilized in
12 manufacturing consumer products and increasing public awareness of those chemicals through the
13 promotion of sound environmental practices and corporate responsibility. CAPA is a person, within
14 the meaning of Health & Safety Code § 25249.11(a), and CAPA brings this action in the public
15 interest pursuant to Health and Safety Code § 25249.7(d).

16 7. Defendant DAISO CALIFORNIA LLC (“DAISO”) is a private company located in
17 California, supplying consumer products and doing business within the State of California at all
18 relevant times herein.

19 8. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
20 Defendant DAISO was and is a person in the course of doing business, with ten (10) or more
21 employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

22 9. DAISO manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 10. Defendant DOES 1-10 (“MANUFACTURER DEFENDANTS”) are each a person
26 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
27 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
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1 manufacture, or each implies by its conduct that it does such, one or more of the PRODUCTS
2 offered for sale or use in California.

3 11. Defendant DOES 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person in
4 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
5 25249.11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport,
6 or each impliedly does so by its conduct, one or more of the PRODUCTS to individuals,
7 businesses, or retailers for sale or use in the State of California

8 12. Defendant DOES 21-30 (“RETAILER DEFENDANTS”) are each a person in the
9 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
10 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the
11 State of California.

12 13. At this time, the true names of defendant DOES 1 through 30, inclusive, are
13 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names, pursuant to
14 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
15 each of the fictitiously named defendant is responsible in some manner for the acts and occurrences
16 alleged herein and the damages caused thereby. When ascertained, their true names and capacities
17 shall be reflected in an amended complaint.

18 14. At all times mentioned herein, DAISO, MANUFACTURER DEFENDANTS,
19 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
20 appropriate, be referred to collectively as the “DEFENDANTS.”

21 **JURISDICTION AND VENUE**

22 15. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code §
23 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
24 Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
25 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
26 other trial courts.” The statute under which this action is brought does not specify any other basis
27 of subject matter jurisdiction.

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1 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” health
2 hazard warning. Health & Safety Code § 25249.6

3 21. An exposure to a hazardous chemical is defined as one that “results from a person’s
4 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...” 27
5 C.C.R. § 25600(h).

6 22. Proposition 65 provides that persons violating the statute may be enjoined in any
7 court of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per
8 violation. Health & Safety Code § 25249.7.

9 23. On October 24, 2003, pursuant to Proposition 65, California identified and listed
10 DEHP as a chemical known to cause cancer, birth defects, and reproductive harm. DEHP became
11 subject to the “clear and reasonable warning” requirements one year later, on October 24, 2004.
12 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

13 **STATEMENT OF FACTS**

14 24. Plaintiff purchased, investigated and tested DEFENDANTS’ PRODUCTS at an
15 accredited lab, and, after consultation with a person with relevant and appropriate expertise who
16 reviewed the collected data and analyzed the risk of exposures to DEHP, determined the
17 PRODUCTS exposure consumers in California to the listed chemical at levels that require a
18 warning under the statute, based on consumers touching, handling or otherwise utilizing the
19 PRODUCTS in accordance with their reasonably foreseeable usage.

20 25. Plaintiff purchased the PRODUCT, without a warning, in California.

21 26. DEFENDANT is a person in the course of doing business.

22 27. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
23 there was a reasonable and meritorious case for this private action, and included the factual
24 information supporting the certificate when it served the notice on the California Attorney
25 General’s Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

26 28. Thereafter, on October 5, 2018, plaintiff served a 60-Day Notice of Violation
27 (“Notice”), together with the requisite certificate of merit, on DAISO, the California Attorney
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1 General's Office, and the requisite public enforcement agencies, alleging that, as a result of
2 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were and are being
3 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS without first
4 receiving a "clear and reasonable warning", as required by Proposition 65.

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

8 **FIRST CAUSE OF ACTION**

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

10 30. CAPA realleges and incorporates by reference, as if fully stated herein, the
11 allegations set forth in Paragraphs 1 through 29, inclusive.

12 31. DEFENDANTS' PRODUCTS contain DEHP in levels that require a clear and
13 reasonable warning under Proposition 65.

14 32. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.
16 DEFENDANTS were also informed of the presence of DEHP in the PRODUCTS through
17 Plaintiff's Notice.

18 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
19 offer for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable
20 use of the PRODUCTS, through dermal contact and/or ingestion.

21 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
22 continues to cause, consumer product exposures to DEHP.

23 35. DEFENDANTS know that the normal and reasonably foreseeable use of the
24 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

25 36. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
26 of the PRODUCTS will occur by their deliberate, non-accidental participation in the California
27 marketplace.

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1 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
2 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
3 chain of commerce in California without a “clear and reasonable warning”;

4 3. That the Court, assess civil penalties against DEFENDANTS, and each of them, in
5 the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at
6 trial;

7 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit,
8 incurred herein; and

9 5. That the Court grant any further relief as the Court may deem just and equitable.

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Dated: May 24, 2019

Respectfully submitted,
GATES JOHNSON LAW

By: *k. gates*
Kimberly Gates Johnson
Attorneys for Plaintiff
Center for Advanced Public Awareness