

E-FILED
4/2/2019 12:00 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV345554
Reviewed By: Matthew Carter

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

Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
VOORHEES & BAILEY, LLP
990 Amarillo Ave
Palo Alto, CA 94303
Telephone: (650) 815-6022
Facsimile: (650) 618-1606
josh@voorheesbailey.com
troy@voorheesbailey.com

Attorneys for Plaintiff
AUDREY DONALDSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

AUDREY DONALDSON,

Plaintiff,

v.

PONTE VEDRA GIFTS AND
ACCESSORIES COMPANY, LLC; and
DOES 1-150, inclusive,

Defendants.

Case No. 19CV345554

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by Plaintiff AUDREY
3 DONALDSON 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 valet trays 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 § 6300 et seq.,
8 who purchase, use or handle defendants’ products, about the risks of exposure to DEHP present in
9 and on the valet trays that defendants manufacture, distribute and offer for sale or use throughout the
10 State of California. Individuals not covered by California’s Occupational Safety Health Act, Labor
11 Code § 6300 et seq., who purchase, use or handle defendants’ products, are referred to hereinafter as
12 “consumers.”

13 3. Detectable levels of DEHP are found in and on the valet trays that defendants
14 manufacture, distribute, and offer for sale to consumers throughout the State of California.

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

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

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
25 hazard warnings in California, valet trays containing DEHP including, but not limited to, the “Nifty
26 Personal Valet Tray” UPC# 8 16846 02518 9. All such valet trays containing DEHP are referred to
27 collectively hereinafter as “PRODUCTS.”
28

1 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
2 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
3 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’
4 violations are ongoing and continuous and, unless enjoined, will continue in the future.

5 29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement agency
6 has commenced and diligently prosecuted a cause of action against DEFENDANTS under
7 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of violation.

8 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
9 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of
10 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
11 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

12 31. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
13 distribute, sell, and offer for sale in California contain DEHP.

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

16 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
17 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of
18 Regulations, section 25602(b).

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

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

25 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
26 in California who have been, or will be, exposed to DEHP through dermal contact and/or ingestion
27 resulting from their use of the PRODUCTS.
28

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

6 38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
7 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
8 per day for each violation.

9 39. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
10 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

13 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties
14 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

15 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
16 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
17 for sale or use in California without a “clear and reasonable warning” in accordance with title 27 of
18 the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with
19 exposures to DEHP;

20 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary
21 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
22 chain of commerce in California without a “clear and reasonable warning” as defined by California
23 Code of Regulations title 27, section 25601 *et seq.*;

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

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

- 4. That the Court grant Plaintiff her 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: April 1, 2019

Respectfully submitted,
VOORHEES & BAILEY, LLP

By: 

Josh Voorhees
Attorneys for Plaintiff
AUDREY DONALDSON