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County of Santa Clara
19CV359153
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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 CITY AND COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION

16 AUDREY DONALDSON,

17 Plaintiff,

18 v.

19 HOME ESSENTIALS & BEYOND, INC.; and
20 DOES 1-150, inclusive,

21 Defendants.

Case No. 19CV359153

**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: (i) Di(2-ethylhexyl) phthalate
5 ("DEHP") and Di-n-Butyl Phthalate ("DBP"), toxic chemicals found in canisters with PVC seals
6 sold by defendants in California ("Canister Products"); and (ii) lead, a toxic chemical found in and
7 on drink dispensers sold by defendants in California ("Drink Dispenser Products").

8 2. By this Complaint, Plaintiff seeks to remedy defendants' continuing failure to warn
9 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,
10 who purchase, use or handle defendants' products, about the risks of exposure to DEHP and DBP
11 present in the Canister Products, and lead in and on the Drink Dispenser Products, that defendants
12 manufacture, distribute and offer for sale or use throughout the State of California. Individuals not
13 covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase,
14 use or handle defendants' products, are referred to hereinafter as "consumers."

15 3. Detectable levels of DEHP are found in the Canister Products that defendants
16 manufacture, distribute, and offer for sale to consumers throughout the State of California.

17 4. Detectable levels of DBP are found in the Canister Products that defendants
18 manufacture, distribute, and offer for sale to consumers throughout the State of California.

19 5. Detectable levels of lead are found in and on the Drink Dispenser Products that
20 defendants manufacture, distribute, and offer for sale to consumers throughout the State of
21 California.

22 6. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
23 Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing
24 business shall knowingly and intentionally expose any individual to a chemical known to the state to
25 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
26 individual..." Health & Safety Code § 25249.6.

27 7. Pursuant to Proposition 65, on October 24, 2003, California listed DEHP as a chemical
28 known to cause birth defects and other reproductive harm. DEHP became subject to the "clear and

1 reasonable warning” requirements of the act one year later, on October 24, 2004. Cal. Code Regs.
2 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

3 8. Pursuant to Proposition 65, on December 2, 2005, California listed DBP as a chemical
4 known to cause birth defects and other reproductive harm. DBP became subject to the “clear and
5 reasonable warning” requirements of the act one year later, on December 2, 2005. Cal. Code Regs.
6 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 9. Pursuant to Proposition 65, on February 27, 1987, California listed lead as a chemical
8 known to cause birth defects and other reproductive harm. Lead became subject to the “clear and
9 reasonable warning” requirements of the act one year later, on February 27, 1988. Cal. Code Regs.
10 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

11 10. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
12 hazard warnings in California, canisters with PVC seals containing DEHP and/or DBP including, but
13 not limited to, the “*Farmland Collection Ceramic Canister, UPC 7 86460 91215 1, Item No 91215*”.
14 All such canisters with PVC seals containing DEHP and/or DBP are referred to collectively
15 hereinafter as “CANISTER PRODUCTS.”

16 11. Defendants’ failure to warn consumers in the State of California of the health hazards
17 associated with exposures to DEHP and/or DBP in conjunction with defendants’ sales of the
18 CANISTER PRODUCTS are violations of Proposition 65, and subject defendants, and each of them,
19 to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
20 § 25249.7(a) & (b)(1).

21 12. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
22 hazard warnings in California, drink dispensers containing lead including, but not limited to, the
23 “*Home Essentials Drink Dispenser*” UPC: 7 86460 04358 9. All such drink dispensers containing
24 lead are referred to collectively hereinafter as “DRINK DISPENSER PRODUCTS.”

25 13. The CANISTER PRODUCTS and DRINK DISPENSER PRODUCTS shall
26 hereinafter be collectively referred to as the “PRODUCTS.”

27 14. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and
28 permanent injunctive relief to compel defendants to provide consumers of the CANISTER

1 PRODUCTS with the required warning regarding the health hazards associated with exposures to
2 DEHP and DBP. Health & Safety Code § 25249.7(a).

3 15. For defendants' violations of Proposition 65, Plaintiff seeks preliminary and
4 permanent injunctive relief to compel defendants to provide consumers of the DRINK DISPENSER
5 PRODUCTS with the required warning regarding the health hazards associated with exposures to
6 lead. Health & Safety Code § 25249.7(a).

7 16. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties
8 against defendants for their violations of Proposition 65.

9 **PARTIES**

10 17. Plaintiff AUDREY DONALDSON is a citizen of the State of California who is
11 dedicated to protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer products; and he brings this action in the public interest pursuant to Health
13 and Safety Code § 25249.7(d).

14 18. Defendant HOME ESSENTIALS & BEYOND, INC. ("HOME ESSENTIALS") is a
15 person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6
16 and 25249.11.

17 19. HOME ESSENTIALS manufactures, imports, distributes, sells, and/or offers the
18 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
19 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

20 20. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in
21 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
22 25249.11.

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

1 22. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
2 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
3 25249.11.

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

9 24. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
10 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

11 25. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
12 individuals in the State of California.

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

18 27. HOME ESSENTIALS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
19 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred
20 to collectively as the “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

22 28. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code
23 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
24 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
25 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
26 conducted, and continue to conduct, business in Santa Clara County with respect to the
27 PRODUCTS.
28

1 35. On August 13, 2019, Plaintiff served a sixty-day notice of violation, together with the
2 accompanying certificate of merit, on HOME ESSENTIALS, the California Attorney General, and
3 all other requisite public enforcers alleging that, as a result of DEFENDANTS' sales of the DRINK
4 DISPENSER PRODUCTS, consumers in the State of California are being exposed to lead resulting
5 from their reasonably foreseeable use of the DRINK DISPENSER PRODUCTS, without the
6 consumers first receiving a "clear and reasonable warning" regarding the harms associated with
7 exposures to lead as required by Proposition 65.

8 36. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
9 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
10 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, DEFENDANTS'
11 violations are ongoing and continuous and, unless enjoined, will continue in the future.

12 37. After receiving Plaintiff's sixty-day notices of violation, no public enforcement agency
13 has commenced and diligently prosecuted a cause of action against DEFENDANTS under
14 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of violation.

15 38. The CANISTER PRODUCTS that DEFENDANTS manufacture, import, distribute,
16 sell, and offer for sale or use in California cause exposures to DEHP and DBP as a result of the
17 reasonably foreseeable use of the CANISTER PRODUCTS. Such exposures caused by
18 DEFENDANTS and endured by consumers in California are not exempt from the "clear and
19 reasonable" warning requirements of Proposition 65.

20 39. DEFENDANTS know or should know that the CANISTER PRODUCTS they
21 manufacture, import, distribute, sell, and offer for sale in California contain DEHP and DBP.

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

24 41. The normal and reasonably foreseeable use of the CANISTER PRODUCTS has
25 caused, and continues to cause, consumer exposures to DEHP and DBP, as defined by title 27 of the
26 California Code of Regulations, section 25602(b).

1 42. DEFENDANTS know that the normal and reasonably foreseeable use of the
2 CANISTER PRODUCTS exposes individuals to DEHP and DBP through dermal contact and/or
3 ingestion.

4 43. DEFENDANTS intend that exposures to DEHP and DBP from the reasonably
5 foreseeable use of the CANISTER PRODUCTS will occur by their deliberate, non-accidental
6 participation in the manufacture, importation, distribution, sale, and offering of the CANISTER
7 PRODUCTS for sale or use to consumers in California.

8 44. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
9 in California who have been, or will be, exposed to DEHP and DBP through dermal contact and/or
10 ingestion resulting from their use of the CANISTER PRODUCTS.

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

16 46. The DRINK DISPENSER PRODUCTS that DEFENDANTS manufacture, import,
17 distribute, sell, and offer for sale or use in California cause exposures to lead as a result of the
18 reasonably foreseeable use of the DRINK DISPENSER PRODUCTS. Such exposures caused by
19 DEFENDANTS and endured by consumers in California are not exempt from the “clear and
20 reasonable” warning requirements of Proposition 65.

21 47. DEFENDANTS know or should know that the DRINK DISPENSER PRODUCTS
22 they manufacture, import, distribute, sell, and offer for sale in California contain lead.

23 48. Lead is present in and on the DRINK DISPENSER PRODUCTS in such a way as to
24 expose consumers through dermal contact and/or ingestion during reasonably foreseeable use.

25 49. The normal and reasonably foreseeable use of the DRINK DISPENSER PRODUCTS
26 has caused, and continues to cause, consumer exposures to lead, as defined by title 27 of the
27 California Code of Regulations, section 25602(b).

28

1 50. DEFENDANTS know that the normal and reasonably foreseeable use of the DRINK
2 DISPENSER PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

3 51. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use of
4 the DRINK DISPENSER PRODUCTS will occur by their deliberate, non-accidental participation in
5 the manufacture, importation, distribution, sale, and offering of the DRINK DISPENSER
6 PRODUCTS for sale or use to consumers in California.

7 52. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
8 in California who have been, or will be, exposed to lead through dermal contact and/or ingestion
9 resulting from their use of the DRINK DISPENSER PRODUCTS.

10 53. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
11 directly by California voters, consumers exposed to lead through dermal contact and/or ingestion as
12 a result of their use of the DRINK DISPENSER PRODUCTS that DEFENDANTS sell without a
13 “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
14 for which they have no plain, speedy, or adequate remedy at law.

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

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

20 **PRAYER FOR RELIEF**

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

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

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

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

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

10 5. That the Court grant Plaintiff her reasonable attorneys’ fees and costs of suit; and

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

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14 Dated: November 25, 2019

Respectfully submitted,

VOORHEES & BAILEY, LLP

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18 By: 

Troy Bailey
Attorneys for Plaintiff
AUDREY DONALDSON