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9 LAURENCE VINOCUR

ENDORSED
FILED
San Francisco County Superior Court

APR 24 2020

CLERK OF THE COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

CGC-20-584233

LAURENCE VINOCUR,

Plaintiff,

v.

BEST BUY CO., INC.; CANON U.S.A., INC.;
and DOES 1-150, inclusive,

Defendants.

Case No. _____

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

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 bags with vinyl shoulder straps sold by defendants in
6 California.

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

14 3. Detectable levels of DEHP are found in and on bags with vinyl shoulder straps that
15 defendants manufacture, distribute, and offer for sale to consumers and other individuals
16 throughout the State of California.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
24 subject to the "clear and reasonable warning" requirements of the act one year later on October 24,
25 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
27 hazard warnings in California, bags with vinyl shoulder straps including, but not limited to, the
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1 *Canon Digital Gadget Bag 200DG, #9320A003AA, UPC #7 50845 81884 0.* All such bags with
2 vinyl shoulder straps containing DEHP that are manufactured, distributed, sold, or offered for sale
3 by defendants in the State of California are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

15 **PARTIES**

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

20 11. Defendant BEST BUY CO., INC. (BEST BUY) is a person in the course of doing
21 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

22 12. BEST BUY manufactures, imports, distributes, sells, and/or offers the PRODUCTS
23 for 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 13. Defendant CANON U.S.A., INC. (CANON) is a person in the course of doing
26 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

1 14. CANON manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
2 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 15. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each a person in
5 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
6 25249.11.

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

11 17. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each a person in
12 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
13 25249.11.

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

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

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

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

3 22. BEST BUY, CANON, MANUFACTURER DEFENDANTS, DISTRIBUTOR
4 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
5 referred to collectively as the “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

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

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

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

1 **FIRST CAUSE OF ACTION**

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

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

5 27. 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 28. 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 29. On July 23, 2019, plaintiff served a 60-Day Notice of Violation, (the Notice),
13 together with the requisite certificate of merit, on CANON, the California Attorney General’s
14 Office, and the requisite public enforcement agencies alleging that, as a result of DEFENDANTS’
15 sales of the PRODUCTS, consumers in the State of California are being exposed to DEHP
16 resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first
17 receiving a “clear and reasonable warning” regarding the harms associated with exposures to
18 DEHP, as required by Proposition 65.

19 30. On February 11, 2020, plaintiff served a Supplemental 60-Day Notice of Violation,
20 (the Supplemental Notice), together with the requisite certificate of merit, on BEST BUY,
21 CANON, the California Attorney General’s Office, and the requisite public enforcement agencies
22 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of
23 California are being exposed to DEHP resulting from their reasonably foreseeable use of the
24 PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding
25 the harms associated with exposures to DEHP, as required by Proposition 65. The Notice and
26 Supplemental Notice shall be referred to collectively as the “Notices.”
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1 31. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
2 sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
3 violations have continued beyond their receipt of plaintiff's Notices. As such, DEFENDANTS'
4 violations are ongoing and continuous in nature and, unless enjoined will continue in the future.

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

8 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
9 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
10 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
11 consumers and other individuals in California are not exempt from the "clear and reasonable"
12 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25600 *et seq.*, regarding the harms associated with exposures to DEHP;

3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS

1 currently in the chain of commerce in California without a “clear and reasonable warning” as
2 defined by California Code of Regulations title 27, section 25600 *et seq.*;

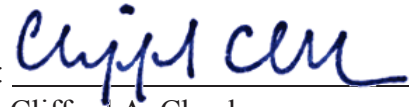
3 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

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6 Dated: April 23, 2020

Respectfully submitted,
CHANLER, LLC

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9 By: _____



Clifford A. Chanler
Attorneys for Plaintiff
LAURENCE VINOCUR