

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUL 17 2020

CLERK OF THE COURT
ANGELICA SUNGA
BY: _____ Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

CGC-20-585451

10 ENVIROPROTECT, LLC, in the public
interest,

Case Number:

11 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

12 vs.

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

13 D&C INTERNATIONAL, INC., a California
14 Corporation; and DOES 1 through 50,
15 inclusive,

16 Defendants.

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19 Plaintiff EnviroProtect, LLC (“EP” or “Plaintiff”), in the public interest, alleges as follows
20 as to matters within its own knowledge, and on information and belief as to all other matters:

21 INTRODUCTION

22 1. This action seeks to remedy the alleged failure of D&C International, Inc. (“D&C”) and
23 DOES 1-50 (hereinafter individually referred to as “Defendant” and collectively as
24 “Defendants”) to warn consumers in California that they are being exposed to Di-(2-ethylhexyl)
25 phthalate (“DEHP”), a substance known to the State of California to cause cancer and
26 developmental/reproductive toxicity. Plaintiff alleges such exposures have occurred through the
27 manufacture, distribution, sale and consumer use of Defendants’ 10pc Blender Collection, D&C
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1 Style No. 19275, Ross SKU # 400198320292, which was imported, sold and/or distributed for
2 sale in California by D&C (the “Products”). California consumers are directly exposed to DEHP
3 through the touching of the components of the Products. In addition, DEHP transferred to the
4 hand is then ingested through hand to mouth contact.

5 2. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
6 Safety Code Section 25249.5 *et seq.* (hereinafter “Proposition 65”), it is unlawful for businesses
7 to knowingly and intentionally expose individuals in California to chemicals known to the State
8 to cause cancer and/or birth defects or other reproductive harm above the safe harbor levels,
9 which include the No Significant Risk Levels (“NSRLs”) and/or Maximum Allowable Dose
10 Levels (“MADLs”) without providing “clear and reasonable” warnings to individuals prior to
11 their exposure.

12 3. Despite the fact that Defendants’ Products allegedly expose consumers to levels of DEHP
13 above the listed NSRLs and MADLs, Plaintiff contends that Defendants failed to provide any
14 warnings whatsoever about the carcinogenic hazards associated with DEHP exposure.
15 Moreover, Defendants’ manufacture, packaging, distribution, marketing, and/or sales of the
16 Products without the required health hazard warnings, causes consumers to be involuntarily,
17 unknowingly and unwittingly exposed to levels of DEHP that violate Proposition 65. Thus,
18 Defendants’ conduct subjects them to civil penalties and injunctive relief.

19 JURISDICTION AND VENUE

20 4. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code §
21 25249.7, which allows enforcement in any court of competent jurisdiction. The California
22 Superior Court has jurisdiction over this action pursuant to California Constitution Article VI,
23 Section 10, which grants the Superior Court “original jurisdiction in all cases except those given
24 by statute to other trial courts.” The statute under which this is brought does not specify any other
25 court with jurisdiction.

26 5. This Court has jurisdiction over Defendants because they are business entities that do
27 sufficient business, have sufficient minimum contacts or otherwise intentionally avails themselves
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1 of the California market through the sale, marketing, or use of the Products in the California
2 market and/or by having such other contact with California so as to render the exercise of
3 jurisdiction over them by the California courts consistent with traditional notions of fair play and
4 substantial justice.

5 6. Venue is proper in this Court because, upon information and belief, one or more of the
6 violations arise in San Francisco County.

7 **THE PARTIES**

8 7. EP is a limited liability company organized under the laws of California acting in the
9 interest of the general public seeking to further, among other causes, the protection of the
10 environment, awareness of dangerous chemicals in consumer products, and corporate
11 accountability. EP is a “person” within the meaning of Cal. Health & Safety Code § 25249.11(a)
12 and brings this enforcement action in the public interest pursuant to Cal. Health & Safety Code §
13 25249.7(d).

14 8. EP is informed and believes, and thereon alleges, that defendant D&C is a California
15 Corporation who supplies consumer products to various retail stores in the state of California.
16 D&C is a “person in the course of doing business” within the meaning of Cal. Health & Safety
17 Code § 25249.11(b).

18 9. EP is unaware of the true names or capacities of the Defendants sued herein under the
19 fictitious names DOES 1-50, but prays for leave to amend and serve such fictitiously named
20 Defendants pursuant to California Code of Civil Procedure § 474, once their names and capacities
21 become known.

22 10. EP is informed and believes, and thereon alleges, that each and all of the acts and
23 omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-50,
24 each acting as the agent for the other, with legal authority to act on the other’s behalf. Upon
25 information and belief, the acts of Defendants were in accordance with, and represent the official
26 policies of Defendants.

1 11. At all times herein mentioned, upon information and belief, the Defendants, and each of
2 them, ratified each and every act or omission complained of herein. At all times herein
3 mentioned, upon information and belief, Defendants, and each of them, aided and abetted the acts
4 and omissions of each and all the other Defendants proximately causing the damages herein
5 alleged.

6 12. EP is informed and believes, and thereon alleges, that each of Defendants are in some
7 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
8 and transactions alleged herein.

9 **STATUTORY AND REGULATORY BACKGROUND**

10 13. The People of the State of California declared in Proposition 65 their right "[t]o be
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
12 harm." (Section 1(b) of Initiative Measure, Proposition 65).

13 14. To effectuate this goal, Proposition 65 requires that individuals be provided with a "clear
14 and reasonable warning" before being exposed to substances listed by the State of California as
15 causing cancer or reproductive toxicity. Cal. Health and Safety Code §25249.6 states, in pertinent
16 part:

17 No person in the course of doing business shall knowingly and
18 intentionally expose any individual to a chemical known to the
19 state to cause cancer or reproductive toxicity without first giving
20 clear and reasonable warning to such individual....

21 15. A product exposure to a chemical is one that "results from a person's acquisition,
22 purchase, storage, consumption, or other reasonably foreseeable use of a product" 27 C.C.R.
23 §25600(h).

24 16. Proposition 65 provides that any "person who violates or threatens to violate" the statute
25 may be enjoined in a court of competent jurisdiction. Cal. Health & Safety Code §25249.7. The
26 phrase "threaten to violate" is defined to mean creating "a condition in which there is a substantial
27 probability that a violation will occur" Cal. Health & Safety Code §25249.11(e). Violators are
28 liable for civil penalties of up to \$2,500 per day for each violation of the Act. Cal. Health &
Safety Code §25249.7.

1 17. On October 24, 2003, the State of California officially listed DEHP as a chemical known
2 to cause cancer. On October 24, 2004, one year after it was listed as a chemical known to cause
3 cancer and reproductive/developmental toxicity, DEHP became subject to the clear and reasonable
4 warning requirement regarding under Proposition 65. 27 C.C.R. §27001(c); Cal. Health & Safety
5 Code §25249.10(b). Due to the toxicity of DEHP, the California Office of Environmental Health
6 Hazard Assessment (“OEHHA”) set the NSRL for exposure to DEHP at 310 micrograms per day
7 and a MADL of 410 micrograms per day for oral ingestion.

8 **STATEMENT OF RELEVANT FACTS**

9 18. EP purchased the Product in March 2020.

10 19. To test Defendants’ Products for phthalates, EP engaged a well-respected and accredited
11 testing laboratory to determine the amount of DEHP contained in the Products pursuant to testing
12 methods adopted by the Federal Consumer Products Safety Commission. The testing revealed
13 that the Product had levels of DEHP that Plaintiff believes would result in exposure of DEHP to
14 consumers far higher than the limit proscribed by the NSRL and MADL.

15 20. Plaintiff alleges that Defendants’ Products contain sufficient quantities of DEHP such that
16 individuals who handle the Products are exposed to significant amounts of DEHP through the
17 average and intended use of the Products. For example, ordinary consumers absorb DEHP
18 through the skin when they touch, use, and/or handle the Products. Ordinary consumers also
19 ingest DEHP via hand to mouth contact after they touch, use, or handle the Products and then
20 touch their mouths or other objects that are then placed in their mouths.

21 21. Plaintiff alleges that Defendants know and intend that consumers will use the products in
22 manner stated above, and that they will be exposed to any chemicals such as DEHP that exist in
23 the Products.

24 22. At all times relevant to this action, Defendants, therefore, have knowingly and
25 intentionally exposed the users, consumers and/or handlers of the Products to DEHP without first
26 giving a clear and reasonable warning to such individuals.

1 23. EP is informed and believes, and thereon alleges, that Defendants have, since March 2019,
2 and continuing through the present, exposed consumers to DEHP without providing clear and
3 reasonable warnings regarding the cancer hazards of DEHP.

4 24. As a proximate result of acts by Defendants, as persons in the course of doing business
5 within the meaning of Health & Safety Code §25249.11, Plaintiff alleges they have subjected
6 consumers to violative exposures through the normal and foreseeable use of the Products.

7 25. Any person acting in the public interest has standing to enforce violations of Proposition
8 65 provided that such person has supplied the requisite public enforcers with a valid 60-Day
9 Notice of Violation and such public enforcers are not diligently prosecuting the action with such
10 time. Cal. Health & Safety Code §25249.7(d).

11 26. On March 25, 2020, EP provided a “60-Day Notice of Violations of California Health &
12 Safety Code Section 25249.5 et seq.” (“Notice”) to the California Attorney General, the District
13 Attorneys of every county in California, and the City Attorneys of every California city with a
14 population greater than 750,000 where EP alleges a violation occurred. Defendants were also
15 provided a copy of the Notice. The Notice included, *inter alia*, the following information: the
16 name, address, and telephone number of the noticing individual; the name of the alleged violator;
17 the statute violated; the approximate time period during which violations occurred; and
18 descriptions of the violations including the chemicals involved, the routes of toxic exposure, and
19 the specific product or type of product causing the violations. The Notice package to Defendants
20 also included the most recent version of Appendix A, the Final Adopted Regulatory Text for Title
21 27 of the California Code of Regulations, Section 5903 as amended. In compliance with
22 California Health & Safety Code § 25249.7(d) and 11 C.C.R. §3102, EP provided factual
23 information – on a confidential basis – to the Attorney General sufficient to satisfy basis for the
24 Certificate of Merit, including the testing performed by EP, and/or its litigation consultants, and
25 the facts, studies, or other data supporting the Certificate.

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1 27. After expiration of the sixty (60) day notice period, the appropriate public enforcement
2 agencies have failed to commence and diligently prosecute a cause of action under California
3 Health & Safety Code §25249.5 *et seq.* against Defendants based on the allegations herein.

4 28. EP has engaged in good faith efforts to resolve the claims alleged herein prior to filing this
5 complaint, and as a result, the parties have reached a consent judgment that they intend to file with
6 the Court to resolve the claims in this lawsuit.

7 **FIRST CAUSE OF ACTION**

8 **(Injunctive Relief Pursuant to Cal. Health & Safety Code §25249.5 *et seq.*)**

9 29. EP incorporates by reference and re-alleges as if fully stated herein the material allegations
10 set out in paragraphs 1 through 28, inclusive.

11 30. By committing the acts alleged in this Complaint, Plaintiff alleges that Defendants at all
12 times relevant to this action, and continuing through the present, have violated California Health
13 & Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally
14 exposing individuals in California to chemicals known to the State of California to cause cancer or
15 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,
16 consume or handle the Products containing DEHP, pursuant to California Health & Safety Code
17 §§25249.6 and 25249.11(f).

18 31. By the above-described acts, Plaintiff alleges Defendants have violated California Health
19 & Safety Code §25249.6 and are therefore subject to preliminary and permanent injunctions
20 ordering Defendants to stop violating Proposition 65, to provide warnings to all present and future
21 customers, and to provide warnings to Defendants' past customers who purchased or used the
22 Products without receiving a clear and reasonable warning.

23 32. An action for injunctive relief under Proposition 65 is specifically authorized by California
24 Health & Safety Code §25249.7(a).

25 33. Plaintiff alleges that Defendants actions in selling the Products without clear and
26 reasonable warnings will irreparably harm the citizens of the State of California, for which harm
27 they have no plain, speedy, or adequate remedy at law.

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1 34. In the absence of preliminary and then permanent injunctive relief, Plaintiff alleges that
2 Defendants will continue to create a substantial risk of irreparable injury by continuing to cause
3 consumers to be involuntarily, unknowingly and unwittingly exposed to DEHP through the use,
4 consumption and/or handling of the Products.

5 **SECOND CAUSE OF ACTION**

6 **(Civil Penalties Pursuant to Cal. Health & Safety Code §25249.5 *et seq*)**

7 35. EP incorporates by reference and re-alleges as if fully stated herein the material allegations
8 set out in paragraphs 1 through 34, inclusive.

9 36. By committing the acts alleged in this Complaint, Plaintiff alleges Defendants at all times
10 relevant to this action, and continuing through the present, have violated California Health &
11 Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
12 individuals in California to chemicals known to the State of California to cause cancer or
13 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,
14 consume or handle the Products containing DEHP, pursuant to California Health & Safety Code
15 §§25249.6 and 25249.11(f).

16 37. By engaging in the above-described acts, Plaintiff alleges Defendants are liable, pursuant
17 to California Health & Safety Code §25249.7(b), for a civil penalty of up to \$2,500 per day per
18 violation for each unlawful exposure to DEHP from the Products in an amount in excess of \$1
19 million.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, EP prays for relief and judgment against Defendants, and each of them, as
22 follows:

23 **As to the Causes of Action**

24 1. A preliminary and permanent injunction, pursuant to California Health &
25 Safety Code Code §25249.7(a), enjoining Defendants, their agents, employees, assigns and all
26 persons acting in concert or participating with Defendants, from manufacturing, distributing,
27 marketing or selling the Products in California without either reformulating the Products or
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1 providing a clear and reasonable warning, within the meaning of Proposition 65, that the users
2 and/or handlers of the Products are exposed to DEHP;

3 2. An Order pursuant to California Health & Safety Code §25249.7(a)
4 compelling Defendants to use best methods to identify and locate each individual who purchased
5 the Products during the statutory period, and to provide a warning to such person that the use of
6 the Products will expose them to chemicals known to cause cancer;

7 3. An assessment of civil penalties pursuant to California Health & Safety
8 Code §25249.7(b) against Defendants in the amount of \$2,500 per day for each violation of
9 Proposition 65, in an amount to be determined at trial;

10 4. For an award to EP of its reasonable attorneys' fees and costs of suit
11 incurred herein; and

12 5. For such equitable or other relief as the Court may deem just and proper.

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14 Dated: July 15, 2020

KAWAHITO LAW GROUP APC

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17 By: 
18 James Kawahito
19 Attorneys for Plaintiff
20 ENVIROPROTECT, LLC
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