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County of Santa Clara
20CV371106
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 CITY AND COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION

12
13 AUDREY DONALDSON,

14 Plaintiff,

15 v.

16 SAMSONICO USA LLC; ANHEUSER-
17 BUSCH INBEV WORLDWIDE, INC.; and
DOES 1-150, inclusive,

18 Defendants.

Case No. 20CV371106

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1. This Complaint is a representative action brought by Plaintiff AUDREY DONALDSON in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to Di(2-ethylhexyl) phthalate ("DEHP"), a toxic chemical found in PVC bar mats sold by defendants in California.

2. By this Complaint, Plaintiff seeks to remedy defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants' products, about the risks of exposure to DEHP present in and on the PVC bar mats that defendants manufacture, distribute and offer for sale or use throughout the State of California. Individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants' products, are referred to hereinafter as "consumers."

3. Detectable levels of DEHP are found in the PVC bar mats that defendants manufacture, distribute, and offer for sale to consumers throughout the State of California.

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

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

6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health hazard warnings in California, PVC bar mats containing DEHP including, but not limited to, the "*Budweiser Bar Mat Set*" UPC: 0 43345 18257 4. All such PVC bar mats containing DEHP are referred to collectively hereinafter as "PRODUCTS."

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

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

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

PARTIES

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

11. Defendant SAMSONICO USA LLC (“SAMSONICO”) is a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

12. Defendant ANHEUSER-BUSCH INBEV WORLDWIDE, INC. (“AB INBEV”) is a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

13. SAMSONICO manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

14. AB INBEV imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

1 15. Defendants DOES 1-50 ("MANUFACTURER 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 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
5 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
6 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in
7 California.

8 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in
9 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
10 25249.11.

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

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

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

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

25 22. SAMSONICO, AB INBEV, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred
27 to collectively as the "DEFENDANTS."
28

1 **VENUE AND JURISDICTION**

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

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

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

18 **FIRST CAUSE OF ACTION**

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

20 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
21 1 through 25, inclusive.

22 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
23 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed
24 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

25 28. Proposition 65 states, "[n]o person in the course of doing business shall knowingly and
26 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
27 toxicity without first giving clear and reasonable warning to such individual...." Health & Safety
28 Code § 25249.6.

1 29. On February 19, 2020, Plaintiff served a sixty-day notice of violation, together with
2 the accompanying certificate of merit, on AB INBEV, the California Attorney General, and all other
3 requisite public enforcers alleging that, as a result of AB INBEV's sales of the PRODUCTS,
4 consumers in the State of California are being exposed to DEHP resulting from their reasonably
5 foreseeable use of the PRODUCTS, without the consumers first receiving a "clear and reasonable
6 warning" regarding the harms associated with exposures to DEHP as required by Proposition 65.

7 30. Thereafter, on June 23, 2020, Plaintiff (adding SAMSONICO as a notice recipient)
8 served a supplemental sixty-day notice of violation, together with the accompanying certificate of
9 merit, on SAMSONICO, AB INBEV, the California Attorney General, and all other requisite public
10 enforcers alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers in the
11 State of California are being exposed to DEHP resulting from their reasonably foreseeable use of the
12 PRODUCTS, without the consumers first receiving a "clear and reasonable warning" regarding the
13 harms associated with exposures to DEHP as required by Proposition 65.

14 31. The February 19, 2020 notice of violation and June 23, 2020 supplemental notice of
15 violation shall hereinafter be referred to collectively as the "notices" or "notices of violation".

16 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
17 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
18 continued beyond their receipt of Plaintiff's notices. As such, DEFENDANTS' violations are
19 ongoing and continuous and, unless enjoined, will continue in the future.

20 33. After receiving Plaintiff's notices, no public enforcement agency has commenced and
21 diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the
22 alleged violations that are the subject of Plaintiff's notices of violation.

23 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
24 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of
25 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
26 California are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

27 35. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
28 distribute, sell, and offer for sale in California contain DEHP.

1 36. DEHP is present in the PRODUCTS in such a way as to expose consumers through
2 dermal contact and/or ingestion during reasonably foreseeable use.

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

6 38. DEFENDANTS know that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

8 39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
9 of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,
10 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
11 California.

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

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

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

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

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1 **PRAYER FOR RELIEF**

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

- 3 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties
4 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;
- 5 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
6 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
7 for sale or use in California without a “clear and reasonable warning” in accordance with title 27 of
8 the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with
9 exposures to DEHP;
- 10 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary
11 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
12 chain of commerce in California without a “clear and reasonable warning” as defined by California
13 Code of Regulations title 27, section 25601 *et seq.*;
- 14 4. That the Court grant Plaintiff her reasonable attorneys’ fees and costs of suit; and
15 5. That the Court grant such other and further relief as may be just and proper.
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18 Dated: September 23, 2020

Respectfully submitted,

19 VOORHEES & BAILEY, LLP

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22 By: 

23 Troy Bailey
24 Attorneys for Plaintiff
25 AUDREY DONALDSON
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