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Superior Court of California,
County of San Francisco

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 CITY AND COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

CGC-21-591022

10 MY NGUYEN,

11 Plaintiff,

12 v.

13 PASCO SPECIALTY &
14 MANUFACTURING INC.; and
15 DOES 1-30, inclusive,

16 Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

UNLIMITED CIVIL

1 Plaintiff MY NGUYEN, acting in the public interest, alleges a cause of action against
2 DEFENDANTS PASCO SPECIALTY & MANUFACTURING INC. and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff MY NGUYEN in the
5 public interest of the citizens of the State of California (“**California**” or “**State**”) to enforce the
6 People’s right to be informed of the health hazards caused by exposures to diisononyl phthalate
7 (“**DINP**”), a toxic chemical found in and on vinyl tape sold by defendants in California.

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 DINP, a substance
11 known to the State of California to cause cancer and present in an on the vinyl tape manufactured,
12 imported, distributed, sold or offered for sale or use throughout the State by defendants. Individuals
13 not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.* who
14 purchase, use or handle defendants’ products are referred to, hereinafter, as “**consumers**”.

15 3. Detectable levels of DINP are found in and on the vinyl tape defendants manufacture,
16 import, distribute, sell or offer for sale or use to individuals and consumers throughout the State.

17 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
18 Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course
19 of doing business to knowingly and intentionally expose consumers in California to chemicals known
20 to the State to cause cancer without first providing a “clear and reasonable” health hazard warning to
21 such individuals or consumers prior to exposure.

22 5. MY NGUYEN contends and alleges defendants manufacture, import, distribute, sell
23 or offer for sale, in or into California, vinyl tape containing DINP without Proposition 65’s requisite
24 health hazard warning about the presence of, and the harms associated with, exposures to the
25 chemical DINP, including, but not limited to, the *PASCO 10 Mil. Pipe Wrap Tape, Model No. 9052,*
26 *ISBN #B000V4D3RM, UPC #6 71451 90521 5* (referred to, hereinafter, as the “**PRODUCTS**”).
27 Defendants’ conduct subjects them to civil penalties for each violation, as well an enjoinder and
28 preliminary and permanent injunctive relief. Health & Safety Code §§ 25249.7(a) and (b).

1 **PARTIES**

2 1. Plaintiff MY NGUYEN is a citizen of California seeking to eliminate toxic chemicals
3 in consumer products, increase public awareness of those chemicals and promote corporate
4 responsibility. MY NGUYEN is a person within the meaning of Health & Safety Code § 25249.11(a)
5 and brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

6 2. Plaintiff is informed, believes and, thereon, alleges, at all relevant times, Defendant
7 PASCO SPECIALTY & MANUFACTURING INC. (“**PASCO**”) was and is a person in the course
8 of doing business, with ten (10) or more employees, within the meaning of Health and Safety Code
9 §§ 25249.6 and 25249.11.

10 3. PASCO manufactures, imports, distributes, sells and/or offers the PRODUCTS for
11 sale or use in California, or implies by its conduct that it manufactures, imports, distributes, sells,
12 and/or offers the PRODUCTS for sale or use in California.

13 4. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
14 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
15 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
16 manufacture, or each impliedly does so by its conduct one or more of the PRODUCTS offered for
17 sale or use in California.

18 5. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
19 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
20 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each
21 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
22 retailers for sale or use in the State.

23 6. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
24 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
25 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale or use to individuals
26 and consumers in California.

27 7. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
28 unknown to plaintiff, who, therefore, sues said DEFENDANTS by their fictitious names, pursuant to

1 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of
2 the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged
3 herein and the damages caused thereby. When ascertained, their true names and capacities shall be
4 reflected in an amended complaint.

5 8. At all times mentioned herein, PASCO, MANUFACTURER DEFENDANTS,
6 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
7 appropriate, be referred to collectively as “DEFENDANTS.”

8 **JURISDICTION AND VENUE**

9 9. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code
10 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
11 Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
12 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
13 other trial courts.” The statute under which this action is brought does not specify any other basis of
14 subject matter jurisdiction.

15 10. The California Superior Court has jurisdiction over DEFENDANTS based on
16 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or
17 association that is a citizen of California, do sufficient business in California, have sufficient
18 minimum contacts in the State, and/or otherwise purposefully and intentionally avail themselves of
19 the California market through their manufacture, importation, distribution, promotion, marketing or
20 sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders the exercise of
21 personal jurisdiction by California courts consistent with traditional notions of fair play and
22 substantial justice.

23 11. Venue is proper in the Superior Court for the City and County of San Francisco
24 pursuant to Code of Civil Procedure §§ 393, 395, and 395.5; because this Court is a court of
25 competent jurisdiction; because plaintiff seeks civil penalties against DEFENDANTS; because one
26 or more instances of wrongful conduct occurred, and continue to occur, in this county; and/or
27 because DEFENDANTS conducted, and continue to conduct, business in the city and county of San
28 Francisco with respect to the PRODUCTS that are the subject of this action.

1 **REGULATORY BACKGROUND AND LAW**

2 12. In 1986, the people of California approved an initiative addressing concerns regarding
3 the harms caused by hazardous chemicals and declaring their right “[t]o be informed about exposures
4 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed
5 General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

6 13. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
7 codified at Health & Safety Code §§ 25249.6 *et seq.*, Proposition 65 states in relevant part “[n]o
8 person in the course of doing business shall knowingly and intentionally expose any individual to a
9 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
10 warning to such individual...”

11 14. Under the Act, a “person the course of doing business” is defined as a business with
12 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
13 exposing individuals to hazardous chemicals known to cause cancer without first giving a “clear and
14 reasonable” health hazard warning. Health & Safety Code § 25249.6

15 15. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
16 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
17 § 25102(i). A consumer product exposure to a hazardous chemical is defined as one that “results
18 from a person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
19 product...” 27 C.C.R. § 25600(h).

20 16. Proposition 65 provides that persons violating the statute may be enjoined in any court
21 of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per violation.
22 Health & Safety Code § 25249.7.

23 17. No warning is required where an exposure which a defendant can show poses “no
24 significant risk assuming lifetime exposure at the level in question” based on evidence and standards
25 of comparable scientific validity to the evidence and standards which form the scientific basis for the
26 listing of such chemical pursuant to subdivision (a) of Section 25249.8.” Health & Safety Code §
27 25249.10.

1 18. Pursuant to Health & Safety Code § 25249.10(c), the burden of proof, or the burden to
2 demonstrate an exposure does not pose a significant risk based on a lifetime of exposure, is on the
3 defendant.

4 19. On December 20, 2013, pursuant to Health & Safety Code § 25249.8, California
5 identified and listed DINP as a chemical known to cause cancer, based on evidence clearly showing,
6 through scientifically valid and accepting testing practices, the chemical causes cancer. DINP
7 became subject to the “clear and reasonable warning” requirements one year later, on December 20,
8 2014. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

9 20. On February 8, 2016, the Office of Administrative Law approved the amendment of
10 Title 27, California Code of Regulations, § 25705, Specific Regulatory Levels Posing No Significant
11 Risk for DINP, effective as of April 1, 2016 and establishing a No Significant Risk Level (“NSRL”)
12 of 146 micrograms per day.

13 21. Products exceeding the NSRL require a warning detailing the health hazards
14 associated with the purchase, handling or use of such products. 27 Cal. Code of Regs. § 25705.

15 **STATEMENT OF FACTS**

16 22. Plaintiff purchased, or caused to be purchased, the PRODUCT without a “clear and
17 reasonable” warning in California.

18 23. Plaintiff tested DEFENDANTS’ PRODUCTS at an accredited lab, utilizing
19 scientifically accepted testing methodologies.

20 24. Plaintiff consulted with a person with relevant and appropriate expertise who reviewed
21 the collected data and analyzed the risk of exposures to DINP who determined the PRODUCTS
22 expose consumers in California to the listed chemical at levels requiring a “clear and reasonable”
23 warning, based on consumers touching, handling or otherwise utilizing the PRODUCTS in
24 accordance with their reasonably foreseeable usage.

25 25. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
26 there was a reasonable and meritorious case for this private action and including the factual
27 information supporting the certificate, subsequently served on the California Attorney General’s
28 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

1 Wherefore, MY NGUYEN prays for relief and judgment against DEFENDANTS, and each of
2 them, as follows:

3 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
4 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, selling or otherwise
5 offering the PRODUCTS for sale or use to consumers in California without first providing a “clear
6 and reasonable warning” regarding the harms associated with exposures to DINP;

7 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
8 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
9 chain of commerce in California without a “clear and reasonable warning”;

10 3. That the Court, assess civil penalties against DEFENDANTS, and each of them, in the
11 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

12 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
13 herein; and

14 5. That the Court grant any further relief as the Court may deem just and equitable.

15 Dated: April 20, 2021

Respectfully submitted,

SEVEN HILLS LLP

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18 By: _____


Kimberly Gates Johnson
Attorneys for Plaintiff
My Nguyen