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San Francisco, CA 94111 Telephone: (415) 926-7247	04/20/2021
kimberly@sevenhillsllp.com	Clerk of the Court BY: JACKIE LAPREVOTTE Deputy Clerk
Attorneys for Plaintiff MY NGUYEN	
SUPERIOR COURT OF TH	HE STATE OF CALIFORNIA
CITY AND COUNTY	Y OF SAN FRANCISCO
UNLIMITED CIV	VIL JURISDICTION
	CGC-21-591022
MY NGUYEN,	Case No.
Plaintiff,	COMPLAINT FOR CIVIL PENALTIES
v.	AND INJUNCTIVE RELIEF
PASCO SPECIALTY &	Violation of Proposition 65, The Safe Drinking Water and Toxic
MANUFACTURING INC.; and DOES 1-30, inclusive,	Enforcement Act of 1986 (Health & Safety Code § 25249.5 et seq.)
Defendants.	UNLIMITED CIVIL
COMPLAINT FOR CIVIL PENA	LTIES AND INJUNCTIVE RELIEF
	SEVEN HILLS LLP 4 Embarcadero Center, Suite 1400 San Francisco, CA 94111 Telephone: (415) 926-7247 kimberly@sevenhillsllp.com Attorneys for Plaintiff MY NGUYEN SUPERIOR COURT OF TI CITY AND COUNTY UNLIMITED CIV MY NGUYEN, Plaintiff, v. PASCO SPECIALTY & MANUFACTURING INC.; and DOES 1-30, inclusive, Defendants.

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

INTRODUCTION AND NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff MY NGUYEN in the public interest of the citizens of the State of California ("**California**" or "**State**") to enforce the People's right to be informed of the health hazards caused by exposures to diisononyl phthalate ("**DINP**"), a toxic chemical found in and on vinyl tape 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 DINP, a substance known to the State of California to cause cancer and present in an on the vinyl tape manufactured, imported, distributed, sold or offered for sale or use throughout the State by defendants. 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**".

53.Detectable levels of DINP are found in and on the vinyl tape defendants manufacture,6import, distribute, sell or offer for sale or use to individuals and consumers throughout the State.

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

5. MY NGUYEN contends and alleges defendants manufacture, import, distribute, sell
or offer for sale, in or into California, vinyl tape containing DINP without Proposition 65's requisite
health hazard warning about the presence of, and the harms associated with, exposures to the
chemical DINP, including, but not limited to, the *PASCO 10 Mil. Pipe Wrap Tape, Model No. 9052, ISBN #B000V4D3RM, UPC #6 71451 90521 5* (referred to, hereinafter, as the "PRODUCTS").
Defendants' conduct subjects them to civil penalties for each violation, as well an enjoinment and
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 2
	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

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8. At all times mentioned herein, PASCO, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as "**DEFENDANTS**."

JURISDICTION AND VENUE

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

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

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REGULATORY BACKGROUND AND LAW

12. In 1986, the people of California approved an initiative addressing concerns regarding the harms caused by hazardous chemicals and declaring their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed 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,
inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
§ 25102(i). A consumer product exposure to a hazardous chemical is defined as one that "results
from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
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.

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

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18. 1 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, through scientifically valid and accepting testing practices, the chemical causes cancer. DINP 6 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 associated with the purchase, handling or use of such products. 27 Cal. Code of Regs. § 25705. 14 15 **STATEMENT OF FACTS** 22. Plaintiff purchased, or caused to be purchased, the PRODUCT without a "clear and 16 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.

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1	26. Thereafter, on July 22, 2020, plaintiff served a 60-Day Notice of Violation
2	("Notice"), together with the requisite certificate of merit, on PASCO, the California Attorney
3	General's Office, and the requisite public enforcement agencies, alleging, as a result of
4	DEFENDANTS' sales of the PRODUCTS, consumers in the state of California were and are being
5	exposed to DINP resulting from their reasonably foreseeable handling or use of the PRODUCTS
6	without first receiving a "clear and reasonable warning," as required by Proposition 65.
7	27. After receiving plaintiff's Notice, no public enforcement agency commenced and
8	diligently prosecuted, or is commencing or prosecuting, a cause of action under Proposition 65
9	against DEFENDANTS to enforce the alleged violations that are the subject of the Notice.
10	FIRST CAUSE OF ACTION
11	(Violation of Proposition 65 - Against All DEFENDANTS)
12	28. MY NGUYEN realleges and incorporates by reference, as if fully stated herein, the
13	allegations set forth in Paragraphs 1 through 27, inclusive.
14	29. DEFENDANTS are not exempt from Proposition 65, because they are "businesses"
15	with more than ten (10) employees.
16	30. DEFENDANTS' PRODUCTS are not exempt from the warning requirement, because
17	the PRODUCTS contains DINP at levels exceeding the NSRL based on testing and analysis via
18	generally accepted methodologies and standards.
19	31. DEFENDANTS' PRODUCTS contain DINP at levels in excess of regulatory safe
20	harbor levels, exceeding the NSRL and requiring a clear and reasonable warning pursuant to
21	Proposition 65.
22	32. DEFENDANTS knew or should have known the PRODUCTS they manufacture,
23	import, distribute, sell, and offer for sale or use to consumers in California contain DINP. Plaintiff's
24	Notice also informed DEFENDANTS of the presence of DINP in the PRODUCTS.
25	33. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
26	sale or use in or into California cause exposures to DINP, as a result of the reasonably foreseeable use
27	of the PRODUCTS, through dermal contact and ingestion.
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34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
 continues to cause, exposures to DINP.

35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS exposes individuals to DINP through dermal contact and ingestion.

36. DEFENDANTS intend exposures to DINP from the reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the California marketplace.

8 37. The exposures to DINP, caused by DEFENDANTS and endured by consumers and
9 other individuals in the State, are not exempt from the "clear and reasonable" warning requirements
10 of Proposition 65.

38. DEFENDANTS failed to provide a "clear and reasonable warning" to consumers and
other individuals in California who have been, or who will be, exposed to DINP through dermal
contact and ingestion resulting from their use of the PRODUCTS.

39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
directly by California voters, consumers and other individuals exposed to DINP through dermal
contact and 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.

40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
ongoing and continuous in nature and, unless enjoined, will continue in the future.

41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the abovedescribed 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 § 25249.7(a)
also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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PRAYER FOR RELIEF

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,
16	SEVEN HILLS LLP
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19	Kimberly Gates Johnson Attorneys for Plaintiff
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF 8