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ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**09/17/2021**  
Clerk of the Court  
BY: JACKIE LAPREVOTTE  
Deputy Clerk

6 Attorneys for Plaintiff  
7 KEEP AMERICA SAFE AND BEAUTIFUL

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

11  
12 KEEP AMERICA SAFE AND BEAUTIFUL,

13 Plaintiff,

14 v.

15 WALMART INC.; and DOES 1-30, inclusive,

16 Defendants.

Case No.

**CGC-21-595276**

**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 KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a  
2 cause of action against DEFENDANTS WALMART INC. and DOES 1-30.

### 3 INTRODUCTION AND NATURE OF THE ACTION

4 1. This Complaint is a representative action brought by plaintiff Keep America Safe and  
5 Beautiful (“**KASB**”) in the public interest of the citizens of the State of California (“State” or  
6 “California”) to enforce the People’s right to be informed of the health hazards caused by exposures  
7 to di(2-ethylhexyl) phthalate (“**DEHP**”), a toxic chemical found in and on clapper mitts  
8 manufactured, imported, distributed, sold or offered for sale by defendants in California (referred to,  
9 hereinafter, as the “**PRODUCTS**”).

10 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*  
12 (“**consumers**”) they are being exposed to substances known to the State to cause cancer, birth defects  
13 and other reproductive harm through exposures to DEHP, a chemical present in and on the  
14 PRODUCTS manufactured, imported, distributed, shipped, marketed, sold or offered for sale  
15 throughout California by defendants and purchased by California consumers who handle or use the  
16 PRODUCTS.

17 3. Detectable levels of DEHP are found in and on the PRODUCTS defendants  
18 manufacture, import, sell or distribute for sale to individuals throughout California.

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

24 5. KASB contends defendants manufacture, import, distribute, sell, and offer for sale, in  
25 and into California, PRODUCTS containing DEHP without Proposition 65’s requisite health hazard  
26 warning regarding the harms associated with exposures to the chemicals. Defendants’ conduct  
27 subjects them to civil penalties for each violation, as well an injunction and preliminary and  
28 permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).



1 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each  
2 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or  
3 retailers for sale or use in California

4 12. Defendants DOES 21-30 (“RETAILER DEFENDANTS”) are each a person in the  
5 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
6 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS  
7 for sale to individuals in California.

8 13. At this time, the true names of Defendants DOES 1 through 30, inclusive, are  
9 unknown to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant  
10 to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each  
11 of the fictitiously named Defendants is responsible in some manner for the acts and occurrences  
12 alleged herein and the damages caused thereby. When ascertained, their true names and capacities  
13 shall be reflected in an amended complaint.

14 14. At all times mentioned herein, WALMART, MANUFACTURER DEFENDANTS,  
15 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where  
16 appropriate, be referred to collectively as the “DEFENDANTS.”

### 17 JURISDICTION AND VENUE

18 15. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code  
19 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior  
20 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,  
21 which grants the Superior Court “original jurisdiction in all causes except those given by statute to  
22 other trial courts.” The statute under which this action is brought does not specify any other basis of  
23 subject matter jurisdiction.

24 16. The California Superior Court has jurisdiction over DEFENDANTS, based on  
25 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or  
26 association that is a citizen of the State, does sufficient business in California, has sufficient minimum  
27 contacts in California, and/or otherwise purposefully and intentionally avail themselves of the  
28 California market through their manufacture, importation, distribution, shipment, promotion,

1 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful avilment renders  
2 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair  
3 play and substantial justice.

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

10 **REGULATORY BACKGROUND AND LAW**

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

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

20 20. Under the Act, a “person in the course of doing business” is defined as a business with  
21 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from  
22 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.  
23 Health & Safety Code § 25249.6.

24 21. Exposing individuals to hazardous chemicals means to cause individuals to ingest,  
25 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. Title 27,  
26 California Code of Regulations (“C.C.R.”), Section 25102(i). An exposure to a hazardous chemical  
27 is defined as one that “results from a person’s acquisition, purchase, storage, consumption or other  
28 reasonably foreseeable use of a product...” 27 C.C.R. § 25600(h).

1           22. Under the Act, “[t]he retail seller is responsible for providing the warning required by  
2 Section 25249.6 of the Act for a consumer product exposure” when it has “actual knowledge of the  
3 potential consumer product exposure requiring the warning, and there is no manufacturer, producer,  
4 packager, importer, supplier, or distributor of the product who: (A) [i]s a “person in the course of  
5 doing business” under Section 25249.11(b) of the Act, and (B) [h]as designated an agent for service  
6 of process in California, or has a place of business in California.” 27 C.C.R. § 25600.2(e)(5).

7           23. Under the statute, actual knowledge is defined as, “specific knowledge of the  
8 consumer product exposure received by the retail seller from any reliable source. If the source of this  
9 knowledge is a notice served pursuant to Section 25249.7 (d)(1) of the Act, the retail seller shall not  
10 be deemed to have actual knowledge of any consumer product exposure that is alleged in the notice  
11 until five business days after the retail seller receives a notice that provides a description of the  
12 product with sufficient specificity for the retail seller to readily identify the product in accordance  
13 with Article 9, section 25903(b)(2)(D).” 27 C.C.R. § 25600.2(f).

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

17           25. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,  
18 California identified and listed DEHP as a chemical known to the State cause cancer, birth defects,  
19 and reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements  
20 one year later, on October 24, 2004. 27 C.C.R. § 27001(c); Health & Safety Code §§ 25249.8,  
21 25249.10(b).

### **STATEMENT OF FACTS**

22  
23           26. Plaintiff purchased, or caused to be purchased, on Walmart.com, DEFENDANTS’  
24 PRODUCTS for sale in or into California, without a warning.

25           27. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,  
26 and consulted with a person with relevant and appropriate knowledge and expertise, who, after  
27 reviewing the collected data and analyzing the risk of exposure to DEHP, determined the  
28 PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a

1 warning under the statute, based on touching, handling or otherwise utilizing the PRODUCTS in  
2 accordance with their reasonably foreseeable and intended usages.

3 28. Based on the foregoing, Plaintiff’s attorneys executed certificates of merit, attesting  
4 there was a reasonable and meritorious case for this private action based on the allegations in each  
5 60-Day Notice of Violation (“60-Day Notice(s)”) and included the factual information supporting the  
6 certificates served on the Office of the California Attorney General (“OAG”), as required, with a  
7 copy of each 60-Day Notice. In the regular course of business, the OAG assigned a number to each  
8 60-Day Notice (“Notice No.”). Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

9 29. Each Notice KASB served on Walmart included specific PRODUCT identifying  
10 information for the PRODUCTS alleged to contain DEHP sold without the requisite clear and  
11 reasonable warning, to allow DEFENDANTS to locate the allegedly violative PRODUCTS easily  
12 and promptly upon receipt of the Notices.

13 30. On September 9, 2020, plaintiff served 60-Day Notice No. 2020-02299, together with  
14 the certificate of merit, on WALMART, the OAG, and the requisite public enforcement agencies,  
15 alleging, consumers in California were, and are, being exposed to DEHP through their reasonably  
16 foreseeable use of the products as intended without first receiving a “clear and reasonable warning,”  
17 as required by Proposition 65, as a result of DEFENDANTS’ sales of PRODUCTS, including but not  
18 limited to, the *Black Single Training Clapper Mitt karate Taekwondo Martial arts, bbs-single-*  
19 *clapper, Walmart Product No. 142028706.*

20 31. Five days after the receipt of each of the above referenced Notices, WALMART  
21 continued to distribute, ship, sell, and offer for sale to consumers in California each and every one of  
22 the PRODUCTS without the requisite warning.

23 32. After receiving plaintiff’s Notices, no public enforcement agency has commenced and  
24 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce  
25 the alleged violations that are the subject of the Notices.

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1 **FIRST CAUSE OF ACTION**

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

3 33. KASB realleges and incorporates by reference, as if fully stated herein, the allegations  
4 set forth in Paragraphs 1 through 32, inclusive.

5 34. DEFENDANTS' PRODUCTS contain DEHP at levels requiring a clear and  
6 reasonable warning under Proposition 65.

7 35. DEFENDANTS know or should have known the PRODUCTS they manufacture,  
8 import, distribute, sell, and offer for sale in California contain DEHP.

9 36. Through Plaintiff's Notices, DEFENDANTS were informed and have actual  
10 knowledge of the presence of DEHP in the PRODUCTS.

11 37. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for  
12 sale in or into the State cause exposures to DEHP, through dermal contact and both direct and indirect  
13 ingestion, based on the reasonably foreseeable use of the PRODUCTS.

14 38. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
15 continues to cause, exposures to DEHP.

16 39. DEFENDANTS know, should have known, or have actual knowledge the normal and  
17 reasonably foreseeable uses of the PRODUCTS expose individuals to DEHP through dermal contact  
18 and both direct and indirect ingestion.

19 40. DEFENDANTS intend exposures to DEHP from the reasonably foreseeable use of the  
20 PRODUCTS will occur, by their deliberate, non-accidental participation in the California  
21 marketplace.

22 41. The exposures to DEHP, caused by DEFENDANTS and endured by consumers and  
23 other individuals in California, are not exempt from the "clear and reasonable" warning requirements  
24 of Proposition 65.

25 42. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers  
26 and other individuals in California who have been, or who will be, exposed to DEHP through dermal  
27 contact and both direct and indirect ingestion resulting from the use of the PRODUCTS as intended.  
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3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

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

5. That the Court grant any further relief as it deems just and equitable.

Dated: September 16, 2021

Respectfully submitted,

SEVEN HILLS LLP

By:   
Laralei Paras  
Attorneys for Plaintiff  
*Keep America Safe and Beautiful*