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5 KEEP AMERICA SAFE AND BEAUTIFUL

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
04/21/2021
Clerk of the Court
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Deputy Clerk

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION **CGC-21-591239**

11 KEEP AMERICA SAFE AND BEAUTIFUL,
12 Plaintiff,
13 v.
14 VANDUE CORPORATION; and DOES 1-30,
inclusive,
15 DEFENDANTS.
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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

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1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
2 cause of action against DEFENDANTS VANDUE CORPORATION 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 to enforce the
6 People’s right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate
7 (“DEHP”), a toxic chemical found in and on the ab mats manufactured, imported, distributed, sold or
8 offered for sale or use by Defendants to consumers in the State.

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

15 3. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
16 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
17 (“consumers”) they are being exposed to substances known to the State of California to cause cancer,
18 birth defects and other reproductive harm through exposures to DEHP, when they purchase, use or
19 handle Defendants’ ab mats.

20 4. Detectable levels of DEHP are found in and on the ab mats that Defendants
21 manufacture, import, sell or distribute for sale to individuals throughout the State of California
22 (“State” or “California”).

23 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and offer
24 for sale, in and into California, ab mats (“PRODUCTS”) containing DEHP without Proposition 65’s
25 requisite health hazard warning regarding the harms associated with exposures to the chemical,
26 including, but not limited to, the *AUM Ab Mat Core Fitness Trainer, Model # AUMABMAT-BLACK,*
27 *UPC # 8 81314 76864 6.* Defendants’ conduct subjects them to civil penalties for each violation, as
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1 well an enjoinder and preliminary and permanent injunctive relief. Health & Safety Code
2 § 25249.7(a) and (b).

3 **PARTIES**

4 6. Plaintiff KASB is a non-profit corporation organized under the laws of California and
5 acting in the interest of the general public, dedicated to protecting the health of California citizens and
6 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
7 consumer products and to increasing public awareness of those chemicals through the promotion of
8 sound environmental practices and corporate responsibility. KASB is a person within the meaning of
9 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to
10 Health and Safety Code § 25249.7(d).

11 7. Plaintiff is informed, believes and, thereon, alleges, at all relevant times, Defendant
12 VANDUE CORPORATION (“VANDUE”) was and is a “person” “in the course of doing business”
13 with ten (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and
14 25249.11.

15 8. VANDUE manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
16 sale or use in or into California or implies by its conduct that it manufactures, imports, distributes,
17 sells, and/or offers the PRODUCTS for sale or use in or into the State.

18 9. Defendants DOES 1-10 (“Manufacturer Defendants”) are each a person in the course
19 of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
20 Manufacturer Defendants, and each of them, assemble, fabricate, and manufacture, or each implies by
21 its conduct it does such for one or more of the PRODUCTS offered for sale or use in California.

22 10. Defendants DOES 11-20 (“Distributor Defendants”) are each a person in the course of
23 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. Distributor
24 Defendants, and each of them, distribute, transfer, and transport, or each impliedly does so by its
25 conduct, one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
26 California

27 11. Defendants DOES 21-30 (“Retailer Defendants”) are each a person in the course of
28 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. Retailer

1 Defendants, and each of them, by and through their conduct, offer the PRODUCTS for sale to
2 individuals in the State.

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

9 13. At all times mentioned herein, VANDUE, Manufacturer Defendants, Distributor
10 Defendants, Retailer Defendants and Doe Defendants shall, hereinafter, where appropriate, be
11 referred to collectively as the “DEFENDANTS.”

12 **JURISDICTION AND VENUE**

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

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

27 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to
28 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent

1 jurisdiction; because plaintiff seeks civil penalties against DEFENDANTS; because one or more
2 instances of wrongful conduct occurred, and continue to occur, in this county; and/or because
3 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
4 respect to the PRODUCTS that are the subject of this action.

5 **REGULATORY BACKGROUND AND LAW**

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

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

15 19. Under the Act, a “person the course of doing business” is defined as a business with
16 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
17 exposing individuals to hazardous chemicals without first providing a “clear and reasonable” warning
18 where required. Health & Safety Code § 25249.6

19 20. An exposure to a hazardous chemical is defined as one that “results from a person’s
20 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...” 27
21 C.C.R. § 25600(h).

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

25 22. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
26 California identified and listed DEHP as a chemical known to the State cause cancer, birth defects,
27 and reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements
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1 one year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
2 §§ 25249.8, 25249.10(b).

3 **STATEMENT OF FACTS**

4 23. Plaintiff purchased DEFENDANTS' PRODUCTS in California without a warning.

5 24. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab,
6 utilizing scientifically valid and accepted testing methodologies.

7 25. Thereafter, Plaintiff consulted with a person with relevant and appropriate knowledge
8 and expertise who reviewed the collected data and analyzed the risk of exposure to DEHP,
9 determining the PRODUCTS subject consumers in California to exposure to the listed chemical at
10 levels requiring a warning under the statute, based on consumers touching, handling or otherwise
11 utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.

12 26. DEFENDANTS are each a person in the course of doing business and are, therefore,
13 not exempt from the duty to warn California consumers regarding the risk of exposure to hazardous
14 chemicals, or DEHP.

15 27. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting
16 there was a reasonable and meritorious case for this private action, and included the factual
17 information supporting the certificate when it served the notice on the California Attorney General's
18 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

19 28. Thereafter, on September 11, 2020, plaintiff served a 60-Day Notice of Violation
20 ("Notice") of Proposition 65, together with the certificate of merit, on VANDUE, the California
21 Attorney General's Office, and the requisite public enforcement agencies, alleging, as a result of
22 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being
23 exposed to DEHP through their reasonably foreseeable use of the PRODUCTS as intended without
24 first receiving a "clear and reasonable warning," as required by Proposition 65.

25 29. After receiving plaintiff's Notice, no public enforcement agency commenced or is
26 diligently prosecuting a cause of action against DEFENDANTS pursuant to Proposition 65 to enforce
27 the alleged violations that are the subject of the Notice.

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1 **FIRST CAUSE OF ACTION**

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

3 30. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
4 set forth in Paragraphs 1 through 28, inclusive.

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

7 32. DEFENDANTS knew or should have known the PRODUCTS they manufacture,
8 import, distribute, sell, and offer for sale in California contain DEHP. As a result of Plaintiff's
9 Notice, DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

10 33. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
11 sale in or into California cause exposures to DEHP, through both direct and indirect dermal contact
12 and ingestion, by the reasonably foreseeable use of the PRODUCTS by consumers as intended.

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

15 35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
16 exposes individuals to DEHP through direct and indirect dermal contact and ingestion.

17 36. Through their deliberate, non-accidental participation in the California marketplace,
18 DEFENDANTS intend the result of their actions.

19 37. DEFENDANTS' intentional, non-accidental participation in the California
20 marketplace resulted in consumer exposures to DEHP, arising from the reasonably foreseeable use of
21 the PRODUCTS as intended.

22 38. 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 39. 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 direct
27 and indirect dermal contact and ingestion resulting from the use of the PRODUCTS as intended.
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1 40. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
2 and other individuals, exposed to DEHP through dermal contact and ingestion as a result of their use
3 of the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard
4 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
5 or adequate remedy at law.

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

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

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

15 **PRAYER FOR RELIEF**

16 Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,
17 as follows:

- 18 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
19 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
20 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
21 reasonable warning” to consumers addressing the harms associated with exposures to DEHP;
- 22 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
23 and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain
24 of commerce in California that do not bear a clear and reasonable health hazard warning;
- 25 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the
26 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;
- 27 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
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1 herein; and

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

3 Dated: April 21, 2021


Respectfully submitted,

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SEVEN HILLS LLP

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7 By: 

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Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful

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