

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Anthony Mohr

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company,)
11 Plaintiff,)
12 v.)
13 NATIONAL STORES, INC., a corporation,)
14 and DOES 1 through 100, inclusive,)
15 Defendants.)
16)
17)

CASE NO. 20ST CV 46139

**PLAINTIFF'S COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:
Dept.:
Compl. Filed:

Unlimited Jurisdiction

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INTRODUCTION

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2 1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public
3 interest of the citizens of the State of California, a representative action to enforce the People’s
4 right to be informed of the presence of Di (2-ethylhexyl) Phthalate (“DEHP”), a chemical known
5 to the State of California to cause cancer and reproductive toxicity, found in Go2Karma purses
6 and handbags, sold by Defendants.

7 2. The purpose of this Complaint is to remedy Defendants’ continuing failure to
8 warn California residents about the risk of exposure to the DEHP in the purses and handbags
9 manufactured, distributed, sold, and/or offered for sale to consumers in California.

10 3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
11 the Go2Karma purses/handbags, including but not limited to brown 1384446. The products
12 described in this paragraph shall hereinafter be referred to as the “Products”.

13 4. Children and adults are exposed to the DEHP when they use, touch, handle, play
14 with, repair, maintain, install, and clean the Products.

15 5. Hazardous levels of DEHP are found in the accessible surface areas of the
16 Products manufactured, distributed, sold, and/or offered for sale by Defendants to consumers in
17 California.

18 6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)
19 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and
20 intentionally expose any individual to a chemical known to the state to cause cancer or
21 reproductive toxicity without first giving clear and reasonable warning to such individual...”

22 7. Studies repeatedly conclude that exposure to DEHP is hazardous to the health of
23 children and adults. Accordingly, California has listed the DEHP as a chemical known to the
24 state to cause cancer and reproductive toxicity, and therefore subject to Proposition 65 warning
25 requirements.

26 8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
27 the Products without the required warnings. Defendants’ conduct violates the warning
28 requirements of Proposition 65.

1 **PARTIES**

2 9. Plaintiff is an organization based in California acting in the public interest.
3 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code
4 section 25249.7(d).

5 10. Defendant, NATIONAL STORES, INC. is a person in the course of doing
6 business within the meaning of California Health and Safety Code section 25249.11.
7 NATIONAL STORES, INC. manufactures, distributes, and/or sells the Products for sale and use
8 in California.

9 11. DOES 1 through 100 are each a person in the course of doing business within the
10 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100
11 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of
12 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,
13 Plaintiff's Complaint shall be amended to reflect their true names.

14 12. The defendants identified in paragraphs 10-11 shall collectively be referred to
15 herein as "Defendants".

16 **JURISDICTION AND VENUE**

17 13. This Court has jurisdiction over this action pursuant to California Health and
18 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,
19 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a
20 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited
21 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent
22 injunctive relief.

23 14. This Court has jurisdiction over Defendants because each is a person, firm,
24 corporation, or association with sufficient minimum contacts in the State of California, or
25 otherwise purposefully avails itself to the California market as to render jurisdiction by the
26 California courts consistent with traditional notions of fair play and substantial justice.

27 15. Venue is proper in Los Angeles County Superior Court because one or more
28 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,

1 and/or because Defendants conducted, and continue to conduct, business in this County with
2 respect to the Products.

3 **FIRST CAUSE OF ACTION**

4 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

5 16. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 15, inclusive.

7 17. On September 22, 2020, Plaintiff provided a sixty-day notice of violation (the
8 “Notice”), along with a Certificate of Merit, to NATIONAL STORES, INC., and the various
9 public enforcement agencies with respect to the Proposition 65 violations related to DEHP in the
10 Products. In addition, on said date, in compliance with Health & Safety Code section 25249.7(d),
11 Plaintiff provided confidential factual information sufficient to establish the basis for the
12 Certificate of Merit to the California Attorney General.

13 18. None of the public prosecutors with the authority to prosecute Proposition 65
14 violations has commenced and/or is diligently prosecuting the causes of action against
15 Defendants based on the claims asserted in Plaintiff’s Notice.

16 19. By placing the Products into the stream of commerce, each Defendant is a person
17 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

18 20. Defendants knew and intended that consumers, including children, will use,
19 touch, handle, play with, repair, maintain, install, and clean the Products.

20 21. Defendants knew that the Products contain DEHP. Defendants, who are in the
21 business of marketing consumer goods such as purses and handbags, also should have known or
22 have constructive knowledge that the Products contain DEHP from widespread media coverage
23 and/or other channels of information concerning the presence of DEHP in similar material.

24 22. DEHP is a chemical listed by the State of California as known to cause cancer and
25 reproductive toxicity.

26 23. Defendants’ Products contain sufficient quantities of the DEHP such that
27 consumers, including children, who use, touch, handle, play with, repair, maintain, install, and
28 clean the Products are exposed to unsafe levels of DEHP. DEHP is present in the Products in

1 such a way as to expose individuals to DEHP, as exposure is defined by 27 CCR section
2 25600.1(e): "...that results from a person's acquisition, purchase, storage, consumption, or any
3 reasonably foreseeable use..." Direct and indirect exposure occurs through inhalation, ingestion
4 and/or dermal contact during the reasonably foreseeable use of the Products.

5 24. Defendants knew or should have known that the reasonably foreseeable use of the
6 Products exposes individuals to DEHP through inhalation, ingestion and/or dermal contact.

7 25. Defendants failed to provide a "clear and reasonable warning" to individuals in
8 the State of California who were or could become exposed to DEHP during the reasonably
9 foreseeable use of the Products.

10 26. By committing the acts alleged in this Complaint, Defendants have violated
11 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally
12 exposing individuals to DEHP without first giving clear and reasonable warnings to such
13 individuals regarding the toxicity of DEHP.

14 27. As a result of Defendants' wrongful conduct, individuals in the State of California
15 have been exposed to DEHP through the inhalation, ingestion and/or dermal contact during the
16 reasonably foreseeable use of the Products without a "clear and reasonable warning", and have
17 suffered and continue to suffer harm, each and every day since at least September 22, 2017.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

20 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),
21 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation
22 alleged herein;

23 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
24 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering
25 the Products for sale in California without providing "clear and reasonable warnings" as defined
26 by 27 CCR section 25601;

27 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
28 order Defendants to take action to stop ongoing unwarned exposures to DEHP resulting from use

1 of Products sold by Defendants;

2 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or
3 any other applicable theory, grant Plaintiff's reasonable attorneys' fees and costs of suit; and

4 5. Such other and further relief as may be just and proper.

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6 Dated: December 3, 2020

LAW OFFICES OF LUCAS T. NOVAK

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By: 

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LUCAS T. NOVAK
Attorney for Plaintiff, APS&EE, LLC

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