

Laralei Paras, State Bar No. 203319
Rebecca Jackson, State Bar No. 221583
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillslp.com
rebecca@sevenhillslp.com

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FILED

*Superior Court of California,
County of San Francisco*

01/31/2022
Clerk of the Court

BY: KAREN VALDES
Deputy Clerk

Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

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

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

PMC SUPPLIES LLC; and DOES 1-30, inclusive,

Defendants.

Case No.

CGC-22-597923

**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 PMC SUPPLIES LLC, 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 (the “**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 the tools with PVC grips
8 and vinyl storage/packaging pouches manufactured, imported, distributed, sold or offered for sale by
9 Defendants in the State.

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 birth defects and
13 other reproductive harm through exposures to DEHP, when they purchase, use or handle Defendants’
14 tools with PVC grips and vinyl storage/packaging pouches.

15 3. Detectable levels of DEHP are found in and on the tools with PVC grips and vinyl
16 storage/packaging pouches Defendants manufacture, import, sell or distribute for sale to individuals
17 throughout California.

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

23 5. KASB contends and alleges Defendants manufacture, distribute, import, sell and offer for
24 sale, in and into California, tools with PVC grips and vinyl storage/packaging pouches
25 (“**PRODUCTS**”) containing DEHP, without Proposition 65’s requisite health hazard warning
26 regarding the harms associated with exposures to the chemical, including, but not limited to, *4-3/4”*
27 *120 mm Non-Marring Nylon Round Nose Pliers w/ PVC Grips Jewelry Making Metal Forming Tool*,
28 *SKU: PLR-0059, ASIN: B01N6G69BR*. Defendants’ conduct subjects them to civil penalties for each

1 violation, enjoinder as well as 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 PMC
12 SUPPLIES LLC (“**PMC SUPPLIES**”) was and is a “person” “in the course of doing business” with
13 ten or more employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

14 8. PMC SUPPLIES manufactures, imports, distributes, sells, and/or offers the PRODUCTS
15 for sale or use in the State, or implies by its conduct that it manufactures, imports, distributes, sells,
16 and/or offers the PRODUCTS for sale or use in the State.

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

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

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

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

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

9 13. At all times mentioned herein, PMC SUPPLIES, MANUFACTURER DEFENDANTS,
10 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
11 appropriate, be 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 plaintiff’s
20 information and good faith belief DEFENDANTS are each a person, firm, corporation or association
21 that is a citizen of the State, does sufficient business in California, has sufficient minimum contacts in
22 California, and/or otherwise purposefully and intentionally avail themselves of the California market
23 through their manufacture, importation, distribution, promotion, marketing or sale of PRODUCTS
24 within the State. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction
25 by California courts consistent with traditional notions of fair play and substantial justice.

26 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code
27 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
28 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of

1 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
2 conducted, and continue to conduct, business in the County of San Francisco with respect to the
3 PRODUCTS that are the subject of this action.

4 **REGULATORY BACKGROUND AND LAW**

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

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

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

18 20. Exposing individuals to hazardous chemicals means to cause them to ingest, inhale, contact
19 via body surfaces or otherwise come into contact with a listed chemical. 27 Cal. Code Regs. (“CCR”)
20 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s
21 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
22 27 CCR § 25600(h).

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

26 22. On October 24, 2003, pursuant to Proposition 65’s implementing regulations, California
27 identified and listed DEHP as a chemical known to the State cause birth defects and reproductive
28 harm. DEHP became subject to the “clear and reasonable warning” requirements one year later, on

1 October 24, 2004. 27 CCR § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

2 **STATEMENT OF FACTS**

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

4 24. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, and
5 consulted with a person with relevant and appropriate knowledge and expertise, who, after reviewing
6 the collected data and analyzing the risk of exposure to DEHP, determined the PRODUCTS subject
7 consumers in California to exposure to the listed chemical at levels requiring a warning under the
8 statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their
9 reasonably foreseeable and intended usages.

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

14 26. Thereafter, on October 21, 2020, plaintiff served a 60-Day Notice of Violation ("Notice"),
15 together with the certificate of merit, on PMC SUPPLIES, Amazon.com, Inc., the California Attorney
16 General's Office, and the requisite public enforcement agencies, alleging, as a result of
17 DEFENDANTS' sales of the PRODUCTS, consumers in the State were, and are, being exposed to
18 DEHP through their reasonably foreseeable use of the PRODUCTS as intended without first
19 receiving a "clear and reasonable warning," as required by Proposition 65.

20 27. After receiving plaintiff's Notice, no public enforcement agency has commenced and is
21 diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce the
22 alleged violations that are the subject of the Notice.

23 **FIRST CAUSE OF ACTION**

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

25 28. KASB realleges and incorporates by reference, as if fully stated herein, the allegations set
26 forth in Paragraphs 1 through 27, inclusive.

27 29. DEFENDANTS' PRODUCTS contain DEHP in levels requiring a clear and reasonable
28 warning under Proposition 65.

1 30. DEFENDANTS know or should have known the PRODUCTS they manufacture, import,
2 distribute, sell, and offer for sale in California contain DEHP. As a result of plaintiff's Notice,
3 DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

4 31. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for sale
5 in or into the State cause exposures to DEHP, both direct and/or indirect dermal contact and
6 ingestion, through the reasonably foreseeable use of the PRODUCTS.

7 32. The normal and reasonably foreseeable use of the PRODUCTS has caused, and continues
8 to cause, exposures to DEHP.

9 33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
10 exposes individuals to DEHP through direct and indirect dermal contact and/or ingestion.

11 34. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use of
12 the PRODUCTS will occur by their deliberate, non-accidental participation in the California
13 marketplace.

14 35. The exposures to DEHP, caused by DEFENDANTS and endured by consumers and other
15 individuals in California, are not exempt from the "clear and reasonable" warning requirements of
16 Proposition 65.

17 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
18 and other individuals in California who have been, or who will be, exposed to DEHP through direct
19 and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.

20 37. Contrary to the express policy and statutory prohibition of Proposition 65, consumers and
21 other individuals, exposed to DEHP through dermal contact and ingestion as a result of their use of
22 the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health hazard warning,
23 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
24 adequate remedy at law.

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

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

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

6 **PRAYER FOR RELIEF**

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

9 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
10 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
11 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
12 reasonable warning” to consumers addressing the harms associated with exposures to DEHP;

13 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and
14 permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of
15 commerce in California that do not bear a clear and reasonable health hazard warning;

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

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

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

21 Dated: January 31, 2022

Respectfully submitted,

22 SEVEN HILLS LLP

23
24 By: 

Laralei Paras

Attorneys for Plaintiff

Keep America Safe and Beautiful