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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

11/18/2021
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 CITY AND COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

CGC-21-596440

10
11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 RASHMAN CORPORATION; and
DOES 1-30, inclusive,

15 Defendants.
16

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 RASHMAN 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
5 SAFE AND BEAUTIFUL (“**KASB**”) in the public interest of the citizens of the State of California
6 (“**California**” or “**State**”) to enforce the People’s right to be informed of the health hazards caused
7 by exposures to diisononyl phthalate (“**DINP**”), a toxic chemical found in and on vinyl
8 sphygmomanometer tubing sold by defendants in California.

9 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
10 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
11 who purchase, use or handle defendants’ products about the risks of exposure to DINP, a substance
12 known to the State of California (“**State**” or “**California**”) to cause cancer and present in an on the
13 vinyl sphygmomanometer tubing manufactured, imported, distributed, sold or offered for sale or use
14 throughout the State by defendants. Individuals not covered by California’s Occupational Safety
15 Health Act, Labor Code § 6300 *et seq.* who purchase, use or handle defendants’ products are referred
16 to, hereinafter, as “consumers”.

17 3. Detectable levels of DINP are found in and on the vinyl sphygmomanometer tubing
18 defendants manufacture, import, distribute, sell or offer for sale or use to individuals and consumers
19 throughout the State.

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

25 5. KASB contends and alleges defendants manufacture, import, distribute, sell or offer
26 for sale, in or into California, vinyl sphygmomanometer tubing containing DINP without Proposition
27 65’s requisite health hazard warning about the presence of, and the harms associated with, exposures
28 to the chemical DINP, including, but not limited to, the *Prestige Medical Basic Aneroid*

1 *Sphygmomanometer, Model 70-BLK, UPC #7 86511 00070 7* (referred to, hereinafter, as the
2 “PRODUCTS”). Defendants’ conduct subjects them to civil penalties for each violation, as well an
3 enjoinder and preliminary and permanent injunctive relief. Health & Safety Code §§ 25249.7(a)
4 and (b).

5 **PARTIES**

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

13 2. Plaintiff is informed, believes and, thereon, alleges, at all relevant times, Defendant
14 RASHMAN CORPORATION (“RASHMAN”) manufactures and distributes medical instruments
15 and supplies, as part of the professional and commercial equipment and supply wholesaler industry,
16 and was, and is, a person in the course of doing business, with ten (10) or more employees, within
17 the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

18 3. RASHMAN manufactures, imports, distributes, sells and/or offers the PRODUCTS
19 for sale or use in California, or implies by its conduct that it manufactures, imports, distributes, sells,
20 and/or offers the PRODUCTS for sale or use in California.

21 4. Defendants DOES 1-10 (“MANUFACTURER DEFENDANTS”) are each a person in
22 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
23 MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or
24 each impliedly does so by its conduct one or more of the PRODUCTS offered for sale or use in
25 California.

26 5. Defendants DOES 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person in
27 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
28 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each

1 personal jurisdiction by California courts consistent with traditional notions of fair play and
2 substantial justice.

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

9 **REGULATORY BACKGROUND AND LAW**

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

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

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

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

28 16. Proposition 65 provides persons violating the statute may be enjoined in any court of

1 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per violation.
2 Health & Safety Code § 25249.7.

3 17. No warning is required where an exposure defendant can show poses “no significant
4 risk assuming lifetime exposure at the level in question,” based on evidence and standards of
5 comparable scientific validity to the evidence and standards which form the scientific basis for the
6 listing of such chemical, pursuant to subdivision (a) of Section 25249.8.” Health & Safety Code §
7 25249.10.

8 18. Pursuant to Health & Safety Code § 25249.10(c), the burden of proof, or the burden to
9 demonstrate an exposure does not pose a significant risk based on a lifetime of exposure, is on the
10 defendant.

11 19. On December 20, 2013, pursuant to Health & Safety Code § 25249.8, California
12 identified and listed DINP as a chemical known to cause cancer, based on evidence clearly showing,
13 through scientifically valid and accepting testing practices, the chemical causes cancer. DINP
14 became subject to the “clear and reasonable warning” requirements one year later, on December 20,
15 2014. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

16 20. On February 8, 2016, the Office of Administrative Law approved the amendment of
17 Title 27, California Code of Regulations, § 25705, Specific Regulatory Levels Posing No Significant
18 Risk for DINP, effective as of April 1, 2016 and established a No Significant Risk Level (“NSRL”)
19 of 146 micrograms per day.

20 21. Products exceeding the NSRL require a warning detailing the health hazards
21 associated with the purchase, handling or use of such products. 27 Cal. Code of Regs. § 25705.

22 **STATEMENT OF FACTS**

23 22. Plaintiff purchased, or caused to be purchased, the PRODUCT without a “clear and
24 reasonable” warning in California.

25 23. Plaintiff tested DEFENDANTS’ PRODUCTS at an accredited lab, utilizing
26 scientifically accepted testing methodologies.

27 24. Plaintiff consulted with a person with relevant and appropriate expertise who reviewed
28 the collected data and analyzed the risk of exposures to DINP who thereafter determined the

1 PRODUCTS expose consumers in California to the listed chemical at levels requiring a “clear and
2 reasonable” warning, based on consumers touching, handling or otherwise utilizing the PRODUCTS
3 in accordance with their reasonably foreseeable usage.

4 25. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
5 there was a reasonable and meritorious case for this private action and including the factual
6 information supporting the certificate, subsequently served on the California Attorney General’s
7 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

8 26. Thereafter, on November 18, 2020, plaintiff served a 60-Day Notice of Violation
9 (“Notice”), together with the requisite certificate of merit, on RASHMAN, the California Attorney
10 General’s Office, and the requisite public enforcement agencies, alleging, as a result of
11 DEFENDANTS’ sales of the PRODUCTS, consumers in the state of California were and are being
12 exposed to DINP resulting from their reasonably foreseeable handling or use of the PRODUCTS
13 without first receiving a “clear and reasonable warning,” as required by Proposition 65.

14 27. After receiving plaintiff’s Notice, no public enforcement agency commenced and
15 diligently prosecuted, or is commencing or prosecuting, a cause of action under Proposition 65
16 against DEFENDANTS to enforce the alleged violations that are the subject of the Notice.

17 **FIRST CAUSE OF ACTION**

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

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

21 29. DEFENDANTS are not exempt from Proposition 65, because they are “businesses”
22 with more than ten (10) employees.

23 30. DEFENDANTS’ PRODUCTS are not exempt from the warning requirement, because
24 the PRODUCTS contains DINP at levels exceeding the NSRL, based on testing and analysis via
25 generally accepted methodologies and standards.

26 31. DEFENDANTS’ PRODUCTS contain DINP at levels in excess of regulatory safe
27 harbor levels, exceeding the NSRL, and requiring a clear and reasonable warning pursuant to
28 Proposition 65.

1 32. DEFENDANTS knew or should have known the PRODUCTS they manufacture,
2 import, distribute, sell, and offer for sale or use to consumers in California contain DINP. Plaintiff’s
3 Notice also informed DEFENDANTS of the presence of DINP in the PRODUCTS.

4 33. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
5 sale or use in or into California cause exposures to DINP, as a result of the reasonably foreseeable use
6 of the PRODUCTS, through dermal contact and ingestion.

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

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

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

14 37. The exposures to DINP, caused by DEFENDANTS and endured by consumers and
15 other individuals in the State, are not exempt from the “clear and reasonable” warning requirements
16 of Proposition 65.

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

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

25 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
26 sale 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.

