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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

07/23/2021
Clerk of the Court
BY: JACKIE LAPREVOTTE
Deputy Clerk

7 Attorneys for Plaintiff
8 KEEP AMERICA SAFE AND BEAUTIFUL

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED CIVIL JURISDICTION

CGC-21-593483

12 KEEP AMERICA SAFE AND BEAUTIFUL,

13 Plaintiff,

14 v.

15 MFAC, LLC,

16 Defendant.

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

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
2 cause of action against Defendant MFAC, LLC.

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**”) and di-n-butyl phthalate (“**DBP**”) toxic chemicals found in and on the vinyl/PVC jump
8 rope cords and/or handle grips manufactured, imported, distributed, sold or offered for sale by
9 Defendant in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy Defendant’s 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 one or more substances known to the State of California to
13 cause cancer and birth defects or other reproductive harm through exposures to DEHP and/or DBP,
14 when they purchase, use or handle Defendant’s vinyl/PVC jump rope cords and/or handle grips.

15 3. Detectable levels of DEHP are found in and on vinyl/PVC jump rope cords Defendant
16 manufactures, imports, sells or distributes for sale to individuals throughout California.

17 4. Detectable levels of DBP are found in and on the handle grips Defendant
18 manufactures, imports, sells or distributes for sale to individuals throughout California.

19 5. 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 6. KASB contends and alleges Defendant manufactures, distributes, imports, sells, and
25 offers for sale, in and into California vinyl/PVC jump rope cords and handle grips (collectively, the
26 “**PRODUCTS**”) containing DEHP and/or DBP, without Proposition 65’s requisite health hazard
27 warning regarding the harms associated with exposures to the one or more listed chemicals,
28 including, but not limited to, *Perform Better First Place Speed Jump Rope Item Model No. 1139* and

1 *Perform Better Contour Rubber Cable Handle (2 Pack) Item Model No. 5309.* Defendant’s conduct
2 subjects it to civil penalties for each violation, enjoinder as well as preliminary and permanent
3 injunctive relief. Health & Safety Code § 25249.7(a) and (b).

4 **PARTIES**

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

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

15 9. **DEFENDANT** manufactures, imports, distributes, sells, and/or offers the **PRODUCTS**
16 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
17 distributes, sells, and/or offers the **PRODUCTS** for sale or use in the State of California.

18 **JURISDICTION AND VENUE**

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

25 11. The California Superior Court has jurisdiction over **DEFENDANT**, based on
26 plaintiff’s information and good faith belief **DEFENDANT** does sufficient business in California, has
27 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avails
28 itself of the California market through its manufacture, importation, distribution, marketing or sale of

1 PRODUCTS within the State. DEFENDANT’s purposeful avilment renders the exercise of personal
2 jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

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

9 **REGULATORY BACKGROUND AND LAW**

10 13. In 1986, the people of the State of California approved an initiative addressing the
11 harms caused by hazardous chemicals and declared their right “[t]o be informed about exposures to
12 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 14. 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 15. Under the Act, a “person in 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 without first giving a “clear and reasonable” warning.
22 Health & Safety Code § 25249.6.

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

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1 DEFENDANT’s sales of vinyl/PVC jump rope cords, consumers in the State of California were, and
2 are, being exposed to DEHP through their reasonably foreseeable use of the vinyl/PVC jump rope
3 cords as intended without first receiving a “clear and reasonable warning,” as required by
4 Proposition 65.

5 24. On May 13, 2021, plaintiff served a Supplemental 60-Day Notice of Violation (with
6 Notice, collectively, the “Notices”), together with the certificate of merit, on MFAC, Amazon.com,
7 Inc., the California Attorney General’s Office, and the requisite public enforcement agencies,
8 alleging, as a result of DEFENDANT’s sales of the PRODUCTS, consumers in the State of
9 California were, and are, being exposed to DEHP and DBP through their reasonably foreseeable use
10 of the PRODUCTS as intended without first receiving a “clear and reasonable warning,” as required
11 by Proposition 65.

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

15 **FIRST CAUSE OF ACTION**

16 **(Violation of Proposition 65 - Against DEFENDANT)**

17 26. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
18 set forth in Paragraphs 1 through 30, inclusive.

19 27. DEFENDANT’s PRODUCTS contain DEHP and DBP at levels requiring a clear and
20 reasonable warning under Proposition 65.

21 28. DEFENDANT knows or should have known the PRODUCTS it manufactures,
22 imports, distributes, sells, and offers for sale in California contain DEHP and/or DBP. As a result of
23 plaintiff’s Notices, DEFENDANT also has actual knowledge of the presence of DEHP and/or DBP in
24 the PRODUCTS.

25 29. The PRODUCTS DEFENDANT manufactures, imports, distributes, sells, and offers
26 for sale in or into the State of California cause exposures to DEHP and/or DBP, both direct and/or
27 indirect dermal contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

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1 30. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, exposures to DEHP and DBP.

3 31. DEFENDANT knows the normal and reasonably foreseeable use of the PRODUCTS
4 exposes individuals to DEHP and DBP through direct and indirect dermal contact and/or ingestion.

5 32. DEFENDANT intends exposures to DEHP and DBP from the reasonably foreseeable
6 use of the PRODUCTS will occur by its deliberate, non-accidental participation in the California
7 marketplace.

8 33. The exposures to DEHP and DBP, caused by DEFENDANT and endured by
9 consumers and other individuals in California, are not exempt from the “clear and reasonable”
10 warning requirements of Proposition 65.

11 34. DEFENDANT failed to provide a “clear and reasonable warning” to those consumers
12 and other individuals in California who have been, or who will be, exposed to DEHP and DBP
13 through direct and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS
14 as intended.

15 35. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
16 and other individuals, exposed to DEHP and DBP through dermal contact and ingestion as a result of
17 their use of the PRODUCTS that DEFENDANT sold without a “clear and reasonable” health hazard
18 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
19 or adequate remedy at law.

20 36. DEFENDANT manufactures, imports, distributes, sells, and offers the PRODUCTS
21 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANT’s violations have
22 continued beyond its receipt of plaintiff’s Notices. As such, DEFENDANT’s violations are ongoing
23 and continuous in nature and, unless enjoined, will continue in the future.

24 37. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
25 described acts, DEFENDANT is liable for a maximum civil penalty of \$2,500 per day for each
26 violation.

27 38. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
28 also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

1 **PRAYER FOR RELIEF**

2 Wherefore, KASB prays for relief and judgment against DEFENDANT as follows:

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

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

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

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

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

16 Dated: July 23, 2021

Respectfully submitted,

SEVEN HILLS LLP

17
18
19 By: 

Laralei Paras

Attorneys for Plaintiff

Keep America Safe and Beautiful