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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/26/2022 at 10:00:20 AM
Clerk of the Superior Court
By Keira McCray, Deputy Clerk

Attorneys for Plaintiff, Keep America Safe and Beautiful

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

KEEP AMERICA SAFE AND BEAUTIFUL)	CASE NO.: 37-2022-00015508-CU-NP-CTL
Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
VS.)	<i>(Cal. Health & Safety Code § 25249.6 et seq.)</i>
KRAFTWARE CORPORATION)	
AND)	
DOES 1-25 INCLUSIVE)	
DEFENDANTS.)	

NATURE OF THE ACTION

1. This Complaint is a representative action brought by Plaintiff Keep America Safe and Beautiful, in the public interest of the citizens of the State of California, to enforce the people’s right to be informed of the dangers from exposures to DINP (Diisononyl Phthalate) (hereafter “Listed Chemical”) toxic chemical when using the “Kraftware Vinyls and MYLARS Ice Bucket, 3Qt, brown with Brushed Chrome” sold by DEFENDANTS in California.

1 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS` continuing failures
2 to warn California citizens about their exposure to the Listed Chemicals during the normal and
3 intended use of the “Kraftware Vinyls and MYLARS Ice Bucket, 3Qt, brown with Brushed
4 Chrome (hereafter “PRODUCT”), that the DEFENDANT manufactured, distributed and sold, in
5 the State of California and continues to manufacture, distribute and offer for sale in the State of
6 California.

7 3. California citizens, through the act of buying, acquiring or utilizing the product,
8 are exposed to the listed chemical in homes and places throughout California where these
9 products are used.

10 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health & Safety Code § 25249.6 et seq. (Proposition 65), “No person in the course of
12 doing business shall knowingly and intentionally expose any individual to a chemical known to
13 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

15 5. California identified and listed DINP (Diisononyl Phthalate) as a chemical known
16 to cause cancer. DINP (Diisononyl Phthalate) became subject to the warning requirements of
17 Proposition 65 for cancer beginning on December 20, 2013 (*27 CCR § 27002; Cal. Health &*
18 *Safety Code § 25249.6.*)

19 6. DEFENDANTS` past and continuing failures to warn consumers and/or other
20 individuals in the State of California about their exposure to the LISTED CHEMICAL in
21 conjunction with defendant’s sale of the PRODUCT is a violation of Proposition 65 and subjects
22 DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such violation.

23 7. For DEFENDANTS` violations of Proposition 65, plaintiff seeks preliminary
24 injunctive and permanent injunctive relief to compel DEFENDANTS to provide purchasers or
25 users of the PRODUCTS with the required warning regarding the health hazards of the LISTED
26 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

27 8. Plaintiff also seeks civil penalties against DEFENDANTS for their violations of
28 Proposition 65, as provides for by California Health & Safety Code § 25249.7(b).

1 **PARTIES**

2 9. Plaintiff, Keep America Safe and Beautiful is a citizen and resident of the State of
3 California, who is dedicated to protecting the health of California citizens through the
4 elimination and reduction of toxic exposures from consumer PRODUCTS, and brings this action
5 in the public interest pursuant to California Health & Safety Code § 25249.7.

6 10. Defendant Kraftware Corporation (“DEFENDANTS”) is a person doing business
7 within the meaning of California Health & Safety Code § 25249.11.

8 11. DEFENDANT manufactures, distributes, and/or offers the PRODUCT for sale or
9 use in the State of California or implies by its conduct that it manufactures, distributes and/or
10 offers the PRODUCT for sale or use in the State of California.

11 **VENUE AND JURISDICTION**

12 12. Venue is proper in the San Diego County Superior Court, pursuant to Code of
13 Civil Procedure § 394, 495, 395.5, because this Court is a court of competent jurisdiction,
14 because one or more instances of wrongful conduct occurred, and continues to occur, in the
15 County of San Diego and/or because DEFENDANTS conducted, and continue to conduct,
16 business in this County with respect to the PRODUCT.

17 13. The California Superior Court has jurisdiction over this action pursuant to
18 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
19 all causes except those given by statute to other trial courts.” The statute under which this action
20 is brought does not specify any other basis of subject matter jurisdiction.

21 14. The California Superior Court has jurisdiction over DEFENDANTS based on
22 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
23 association that either are citizens of the State of California, have sufficient minimum contacts in
24 the State of California, or otherwise purposefully avail themselves of the California market.
25 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
26 courts consistent with traditional notions of fair play and substantial justice.

1
2 **FIRST CAUSE OF ACTION**

3 **(Violation of Proposition 65 – Against Defendant)**

4 15. Plaintiff realleges and incorporates by reference, as if full reference, as if fully set
5 forth herein, Paragraphs 1 through 14, inclusive.

6 16. The citizens of the State of California have expressly stated in the Safe Drinking
7 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
8 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
9 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

10 17. Proposition 65 states, “No person in the course of doing business shall knowingly
11 and intentionally expose any individual to a chemical known to the state to cause cancer or
12 productive toxicity without first giving clear and reasonable warning to such individual...
13 (*Id.*)”

14 18. On May 21, 2021 a sixty-day notice violation, together with the requisite
15 certificate of merit, was provided to DEFENDANTS, and various public enforcement agencies
16 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
17 the State of California were being exposed to the LISTED CHEMICAL resulting from the
18 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
19 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

20 19. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
21 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
22 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
23 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
24 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
25 believes that such violations will continue to occur into the future.

26 20. After receipt of the claims asserted in the sixty-day notices of violation, the
27 appropriate public enforcement agencies have failed to commence and diligently prosecute a
28 cause of action against DEFENDANTS under Proposition 65.

1 21. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
3 limits.

4 22. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
6 CHEMICAL.

7 23. The PRODUCTS, through normal use exposes users to the LISTED CHEMICAL
8 in such a way as to expose individuals to the LISTED CHEMICAL through inhalation, dermal
9 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

10 24. The normal and reasonably foreseeable use of the PRODUCTS has caused and
11 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
12 by 27 CCR§ 25602(b).

13 25. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL..

15 26. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
16 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
17 accidental participation in the manufacture, distribution and/or offer for sale or use of
18 PRODUCTS to individuals in the State of California.

19 27. DEFENDANTS failed to provide a “clear and reasonable warning” to those
20 consumers and/or other individuals in the State of California who were or who could become
21 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

22 28. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
23 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the
24 reasonably foreseeable use of the PRODUCTS, sold by DEFENDENTS without a “clear and
25 reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm
26 they have no plain, speedy or adequate remedy at law.
27
28

1 29. As a consequence of the above-described acts, DEFENDANTS are liable for a
2 maximum civil penal of \$2,500 per day for each violation pursuant to California Health & Safety
3 Code § 25249.7(b).

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

7 31. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
8 hereinafter.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

11 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
12 civil penalties against DEFENDANTS, in the amount of \$2,500 per day for each violation
13 alleged herein;

14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
16 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
17 warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to the
18 LISTED CHEMICAL;

19 3. That the Court grant plaintiff its reasonable attorneys’ fees and cost of suit; and,

20 4. That the Court grant such other and further relief as may be just and proper.

21 Respectfully Submitted,

22 Dated: April 25, 2022

Law Offices of Stephanie Sy

23 By: 
24 _____
25 Stephanie Sy, Esq.
26 Attorney for Plaintiff
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