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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

11/16/2021
Clerk of the Court
BY: EDWARD SANTOS
Deputy Clerk

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

10
11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 CPI GROUP INC. *D/B/A* BIGKITCHEN;
WALMART, INC.; and DOES 1-30, inclusive,

15 DEFENDANTS.
16

Case No. CGC-21-591666

**FIRST AMENDED 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 CPI GROUP INC. D/B/A BIGKITCHEN, WALMART,
3 INC., and DOES 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. This First Amended Complaint is a representative action brought by plaintiff Keep
6 America Safe and Beautiful (“KASB”) in the public interest of the citizens of the State of California
7 to enforce the People’s right to be informed of the health hazards caused by exposures to
8 di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in and on the shower curtains and PU
9 leather game components manufactured, imported, distributed, sold or offered for sale by Defendants
10 in the State of California.

11 2. By this First Amended Complaint, plaintiff seeks to remedy Defendants’ continuing
12 failure to warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
13 § 6300 *et seq.*, (“consumers”) they are being exposed to substances known to the State of California
14 to cause cancer, birth defects and other reproductive harm through exposures to DEHP when they
15 purchase, use or handle Defendants’ shower curtains and PU leather game components in accordance
16 with their intended uses.

17 3. Detectable levels of DEHP are found in and on the shower curtains and in and on the
18 PU leather game components Defendants manufacture, import, sell or distribute for sale to
19 individuals throughout California.

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” or the “statute”), it is unlawful for a
22 person in the course of doing business to knowingly and intentionally expose consumers in California
23 to chemicals known to the State to cause cancer, birth defects or other reproductive harm, without
24 first providing a “clear and reasonable” health hazard warning to such individuals prior to purchase or
25 use.

26 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and
27 offer for sale, in and into California, shower curtains and PU leather game components (collectively,
28 hereinafter, the “PRODUCTS”) containing DEHP without Proposition 65’s requisite health hazard

1 warning regarding the harms associated with exposures to the chemical, including, but not limited to,
2 the *Linens and Bath Vinyl Shower Curtain with 7 Mesh Pockets; Model # 17127; UPC #0 79522*
3 *17127 7* (“SHOWER CURTAIN PRODUCTS”) and the *Vinyl Dice Cup Set (Black Faux Leather),*
4 *Model No. 489552, UPC 0 29441 04536 4* (“FAUX LEATHER PRODUCTS.”) Defendants’
5 conduct subjects them to civil penalties for each violation, as well an injunction and preliminary
6 and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

7 PARTIES

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

15 7. Plaintiff is informed, believes and, thereon, alleges at all relevant times Defendant CPI
16 GROUP INC. D/B/A BIGKITCHEN (“BIGKITCHEN”) was and is a “person” “in the course of
17 doing business” with ten (10) or more employees, within the meanings of Health and Safety Code
18 §§ 25249.6 and 25249.11. BIGKITCHEN is an e-commerce entity operating in the kitchenware
19 industry as a wholesaler to the kitchenware trade and to consumers in California.

20 8. BIG KITCHEN manufactures, imports, distributes, sells, and/or offers the
21 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
22 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

23 9. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant
24 WALMART, INC. (“WALMART”) was and is a “person” “in the course of doing business” with ten
25 (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.
26 Walmart is an American-based multinational corporation operating a chain of hypermarkets, grocery
27 and department stores within the United States.

28 10. WALMART manufactures, imports, distributes, sells, and/or offers the PRODUCTS

1 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
2 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

3 11. Defendants DOES 1-10 (“Manufacturer Defendants”) are each a person in the course
4 of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
5 Manufacturer Defendants, and each of them, assemble, fabricate, manufacture, and export, or each
6 implies by its conduct that it does such, for one or more of the PRODUCTS offered for sale or use in
7 California.

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

13 13. Defendants DOES 21-30 (“Retailer Defendants”) are each a person in the course of
14 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. Retailer
15 Defendants, and each of them, by and through their conduct, offer the PRODUCTS for sale to
16 individuals in the State of California.

17 14. At this time, the true names of Defendants DOES (“Doe Defendants”) 1 through 30,
18 inclusive, are unknown to plaintiff, who, therefore, sues said Doe Defendants by their fictitious
19 names, pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and, on that
20 basis, alleges each of the fictitiously named Defendants is responsible in some manner for the acts
21 and occurrences alleged herein and the damages caused thereby. When ascertained, their true names
22 and capacities shall be reflected in an amended complaint.

23 15. At all times mentioned herein, BIGKITCHEN, WALMART, Manufacturer
24 Defendants, Distributor Defendants, Retailer Defendants and Doe Defendants shall, hereinafter,
25 where appropriate, be referred to collectively as the “DEFENDANTS.”

26 **JURISDICTION AND VENUE**

27 16. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
28 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior

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

5 17. The California Superior Court has jurisdiction over DEFENDANTS, based on
6 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or
7 association that is a citizen of the State of California; does sufficient business in California; has
8 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
9 themselves of the California market through their manufacture, importation, distribution, promotion,
10 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders
11 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
12 play and substantial justice.

13 18. Venue is proper in the Superior Court for the County of San Francisco, pursuant to
14 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
15 jurisdiction; because plaintiff seeks civil penalties against DEFENDANTS; because one or more
16 instances of wrongful conduct occurred, and continue to occur, in this county; and/or because
17 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
18 respect to the PRODUCTS that are the subject of this action.

19 **REGULATORY BACKGROUND AND LAW**

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

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

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

5 29. Thereafter, on October 7, 2020, plaintiff served a 60-Day Notice of Violation
6 (“Notice”), together with the certificate of merit, on BIGKITCHEN, the California Attorney
7 General’s Office, and the requisite public enforcement agencies, alleging, as a result of
8 DEFENDANTS’ sales of the SHOWER CURTAIN PRODUCTS, consumers in the State of
9 California were, and are, being exposed to DEHP through their reasonably foreseeable use of the
10 PRODUCTS as intended without first receiving a “clear and reasonable warning,” as required by
11 Proposition 65.

12 30. Thereafter, Plaintiff subsequently purchased the FAUX LEATHER PRODUCTS
13 without a warning in California. Plaintiff tested the FAUX LEATHER PRODUCTS at an accredited
14 laboratory, and, after tests showed elevated levels of DEHP, Plaintiff retained an expert to evaluate
15 DEFENDANT’S FAUX LEATHER PRODUCTS and consumers’ potential exposure at levels
16 requiring a warning, based on consumers utilizing the FAUX LEATHER PRODUCTS in accordance
17 with their intended uses. After consulting with the expert, Plaintiff’s attorney executed a certificate of
18 merit attesting the basis for a new Notice and prepared the factual information to support the
19 certificate required to be filed with the Attorney General confidentially.

20 31. Thereafter, on September 3, 2021, plaintiff served a Supplemental 60-Day Notice of
21 Violation (“Supplemental Notice”), together with the certificate of merit, on BIGKITCHEN,
22 WALMART, the California Attorney General’s Office, and the requisite public enforcement
23 agencies, alleging, as a result of DEFENDANTS’ sales of the FAUX LEATHER PRODUCTS,
24 consumers in the State of California were, and are, being exposed to DEHP through their reasonably
25 foreseeable use of the PRODUCTS as intended without first receiving a “clear and reasonable
26 warning,” as required by Proposition 65.

27 32. After receiving plaintiff’s Notice, no public enforcement agency has commenced and
28 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce

1 the alleged violations that are the subject of the Notice.

2 **FIRST CAUSE OF ACTION**

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

4 33. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
5 set forth in Paragraphs 1 through 28, inclusive.

6 34. DEFENDANTS' PRODUCTS contain DEHP in levels requiring a clear and
7 reasonable warning under Proposition 65.

8 35. DEFENDANTS know or should have known the PRODUCTS they manufacture,
9 import, distribute, sell, and offer for sale in California contain DEHP. As a result of Plaintiff's
10 Notice, DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

11 36. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
12 sale in or into the State of California cause exposures to DEHP, both direct and indirect dermal
13 contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

14 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
15 continues to cause, exposures to DEHP.

16 38. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
17 exposes individuals to DEHP through direct and indirect dermal contact and ingestion.

18 39. Through their deliberate, non-accidental participation in the California marketplace,
19 DEFENDANTS intend the result of their actions.

20 40. DEFENDANTS' intentional, non-accidental participation in the California
21 marketplace resulted in consumer exposures to DEHP, arising from the reasonably foreseeable use of
22 the PRODUCTS as intended.

23 41. The exposures to DEHP, caused by DEFENDANTS and endured by consumers and
24 other individuals in California, are not exempt from the "clear and reasonable" warning requirements
25 of Proposition 65.

26 42. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
27 and other individuals in California who have been, or who will be, exposed to DEHP through dermal
28 contact and ingestion resulting from the use of the PRODUCTS as intended.


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

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

Dated: November 16, 2021

Respectfully submitted,
SEVEN HILLS LLP

By: 

Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful