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**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
06/22/2023
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.

A.N.S. XTREME PERFORMANCE, INC.,
ANSGEAR.COM, and DOES 1-30, inclusive,

Defendants.

Case No. **CGC-23-607199**
**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 A.N.S. XTREME PERFORMANCE, INC., ANSGEAR.COM,
3 and DOES 1-30.

4 INTRODUCTION AND NATURE OF THE ACTION

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

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 of California to cause birth
13 defects or other reproductive harm through exposures to DEHP, when they purchase, use or handle
14 Defendants’ vinyl/PVC handles.

15 3. Detectable levels of DEHP are found in and on the vinyl/PVC handles that Defendants
16 manufacture, import, sell or distribute for sale to individuals throughout California.

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

22 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and
23 offer for sale, in and into California vinyl/PVC handles (“**PRODUCTS**”) containing DEHP, without
24 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to
25 the chemical, including, but not limited to, *Warrior Professional Co2 Fill Station W/ 40" Steel*
26 *Braided Hose; Item MS58/ 30WOGMS58/30WOG*. Defendants’ conduct subjects them to civil
27 penalties for each violation, enjoinder as well as preliminary and permanent injunctive relief.
28 Health & Safety Code § 25249.7(a) and (b).

1 **PARTIES**

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

9 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
10 A.N.S. XTREME PERFORMANCE, INC. (“**A.N.S XTREME**”) was and is a “person” “in the
11 course of doing business” with ten (10) or more employees, within the meanings of Health and Safety
12 Code §§ 25249.6 and 25249.11.

13 8. A.N.S. XTREME manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
15 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

16 9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
17 ANSGEAR.COM (“**ANSGEAR**” and, collectively with A.N.S. XTREME, “**A.N.S.**”) was and is a
18 “person” “in the course of doing business” with ten (10) or more employees, within the meanings of
19 Health and Safety Code §§ 25249.6 and 25249.11.

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

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

1 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
2 themselves of the California market through their manufacture, importation, distribution, promotion,
3 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders
4 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
5 play and substantial justice.

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

12 **REGULATORY BACKGROUND AND LAW**

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

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

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

26 22. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
27 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
28 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s

1 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
2 27 C.C.R. § 25600(h).

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

6 24. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
7 California identified and listed DEHP as a chemical known to the State cause birth defects and
8 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one
9 year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
10 §§ 25249.8, 25249.10(b).

11 STATEMENT OF FACTS

12 25. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

13 26. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,
14 and consulted with a person with relevant and appropriate knowledge and expertise, who, after
15 reviewing the collected data and analyzing the risk of exposure to DEHP, determined the
16 PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a
17 warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in
18 accordance with their reasonably foreseeable and intended usages.

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

23 28. Thereafter, on June 23, 2022, plaintiff served a 60-Day Notice of Violation (“**Notice**”),
24 together with the certificate of merit, on A.N.S. XTREME, ANSgear.com, the California Attorney
25 General’s Office, and the requisite public enforcement agencies, alleging, as a result of
26 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and are, being
27 exposed to DEHP through their reasonably foreseeable use of the PRODUCTS as intended without
28 first receiving a “clear and reasonable warning,” as required by Proposition 65.


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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: June 22, 2023

Respectfully submitted,
SEVEN HILLS LLP

By: 

Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful