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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

07/07/2023
Clerk of the Court
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 CITY AND COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

CGC-23-607505

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11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 ADFA, INCORPORATED; A&A
15 JEWELRY SUPPLY; and DOES 1-
30, inclusive,

16 Defendants.

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 DEFENDANTS ADFA, INCORPORATED; A&A JEWELRY SUPPLY and
3 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 diisononyl phthalate
8 (“**DINP**”), a toxic chemical found in and on tools with vinyl/PVC handles sold by defendants in the
9 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 who purchase, use or handle defendants’ products about the risks of exposure to DINP, a substance
13 known to the State of California (“**California**” or “**State**”) to cause cancer and present in an on the
14 tools with vinyl/PVC handles manufactured, imported, distributed, sold or offered for sale or use
15 throughout the State by defendants. Individuals not covered by California’s Occupational Safety
16 Health Act, Labor Code § 6300 *et seq.* who purchase, use or handle defendants’ products are referred
17 to, hereinafter, as “**consumers**”.

18 3. Detectable levels of DINP are found in and on the tools with vinyl/PVC handles
19 defendants manufacture, import, distribute, sell or offer for sale or use to individuals and consumers
20 throughout the State.

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

26 5. KASB contends and alleges defendants manufacture, import, distribute, sell or offer
27 for sale, in or into California, tools with vinyl/PVC handles containing DINP without Proposition
28 65’s requisite health hazard warning about the presence of, and the harms associated with, exposures

1 to the chemical DINP, including, but not limited to, the *ADFA Tapered Jaw Side Cutter; Item#: 60-*
2 *018; Length 5 1/4"* (referred to, hereinafter, as the “**PRODUCTS**”). Defendants’ conduct subjects
3 them to civil penalties for each violation, as well an enjoinder and preliminary and permanent
4 injunctive relief. Health & Safety Code §§ 25249.7(a) 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, dedicated to protecting the health of California citizens and
8 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
9 consumer products and to increasing public awareness of those chemicals through the promotion of
10 sound environmental practices and corporate responsibility. KASB is a person within the meaning of
11 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to Health
12 and Safety Code § 25249.7(d).

13 2. Plaintiff is informed, believes and, thereon, alleges, at all relevant times, Defendant
14 ADFA, INCORPORATED (“**ADFA**”) was and is a person in the course of doing business, with ten
15 (10) or more employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

16 3. ADFA manufactures, imports, distributes, sells, and/or offers the **PRODUCTS** for
17 sale or use in the state of California, or implies by its conduct that it manufactures, imports,
18 distributes, sells, and/or offers the **PRODUCTS** for sale or use in the state of California.

19 4. Plaintiff is informed, believes and, thereon, alleges, at all relevant times, Defendant
20 A&A JEWELRY SUPPLY (“**A&A**”) was and is a person in the course of doing business, with ten
21 (10) or more employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

22 5. A&A manufactures, imports, distributes, sells, and/or offers the **PRODUCTS** for sale
23 or use in the state of California, or implies by its conduct that it manufactures, imports, distributes,
24 sells, and/or offers the **PRODUCTS** for sale or use in the state of California.

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

3 7. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
4 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
5 **DISTRIBUTOR DEFENDANTS**, and each of them, distribute, transfer, and transport, or each
6 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
7 retailers for sale or use in the State.

8 8. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
9 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
10 **RETAILER DEFENDANTS**, and each of them, offer the PRODUCTS for sale or use to individuals
11 and consumers in California.

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

18 10. At all times mentioned herein, ADFA, A&A, MANUFACTURER DEFENDANTS,
19 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
20 appropriate, be referred to collectively as the “**DEFENDANTS**.”

21 **JURISDICTION AND VENUE**

22 11. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code
23 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
24 Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
25 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
26 other trial courts.” The statute under which this action is brought does not specify any other basis of
27 subject matter jurisdiction.
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1 reasonable” health hazard warning when those chemicals exceed State-mandated safe harbor levels.

2 Health & Safety Code § 25249.6

3 17. An exposure to a hazardous chemical is defined as one that “results from a person’s
4 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”

5 27 C.C.R. § 25600(h).

6 18. Proposition 65 provides that persons violating the statute may be enjoined in any court
7 of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per violation.

8 Health & Safety Code § 25249.7.

9 19. Proposition 65 provides three exemptions from the warning requirement, pursuant to
10 Health & Safety Code § 25249.10. No warning is required where: (1) Federal law governs manner of
11 warning such that the Statute is preempted; (2) an exposure taking place less than twelve months after
12 a chemical is first listed; or (3) an exposure which the defendant “can show the exposure poses no
13 significant risk assuming lifetime exposure at the level in question for substances known to the state
14 to cause cancer based on evidence and standards of comparable scientific validity to the evidence and
15 standards which form the scientific basis for the listing of such chemical pursuant to subdivision (a)
16 of Section 25249.8.”

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

20 21. On December 20, 2013, pursuant to Health & Safety Code § 25249.8, California
21 identified and listed DINP as a chemical known to cause cancer, based on evidence clearly showing,
22 through scientifically valid and accepting testing practices, the chemical causes cancer. DINP
23 became subject to the “clear and reasonable warning” requirements one year later, on December 20,
24 2014. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

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

1 one year ago; and (3) the PRODUCTS contains DINP at levels exceeding the NSRL, based on testing
2 and analysis via generally accepted methodologies and standards

3 31. DEFENDANTS' PRODUCTS contain DINP at levels in excess of regulatory safe
4 harbor levels, exceeding the NSRL and requiring a clear and reasonable warning pursuant to
5 Proposition 65.

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

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

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

14 35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
15 exposes individuals to DINP through dermal contact and/or ingestion.

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

19 37. The exposures to DINP, caused by DEFENDANTS and endured by consumers and
20 other individuals in the State, are not exempt from the "clear and reasonable" warning requirements
21 of Proposition 65.

22 38. DEFENDANTS failed to provide a "clear and reasonable warning" to consumers and
23 other individuals in California who have been, or who will be, exposed to DINP through dermal
24 contact and/or ingestion resulting from their use of the PRODUCTS.

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

3 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
4 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
5 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are
6 ongoing and continuous in nature and, unless enjoined, will continue in the future.

7 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
8 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
9 per day for each violation.

10 42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
11 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

12 **PRAYER FOR RELIEF**

13 Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,
14 as follows:

15 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
16 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, selling or otherwise
17 offering the PRODUCTS for sale or use to consumers in California without first providing a “clear
18 and reasonable warning” regarding the harms associated with exposures to DINP;

19 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
20 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
21 chain of commerce in California without a “clear and reasonable warning”;

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

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

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5. That the Court grant any further relief as the Court may deem just and equitable.

Dated: July 7, 2023

Respectfully submitted,

SEVEN HILLS LLP

By:  _____

Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful