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Superior Court of California
County of Marin
12/05/2023
James M. Kim, Clerk of the Court
D. Harrison, Deputy

6 Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION

12 KEEP AMERICA SAFE AND BEAUTIFUL,
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14 Plaintiff,
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16 v.
17 THE STOCKROOM, INC.; and DOES 1-30,
18 inclusive,
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20 Defendants.

Case No. ~~ØX€€€FI~~ H

**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 THE STOCKROOM, INC. and DOES 1-30.

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 their
6 right to be informed of the health hazards caused by exposures to di(2-ethylhexyl) phthalate
7 (“**DEHP**”), a toxic chemical found in and on vinyl/PVC bulb pumps manufactured, imported,
8 distributed, sold or offered for sale by Defendants in the State of California.

9 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
10 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
11 (“**consumers**”) they are being exposed to substances known to the State of California to cause birth
12 defects or other reproductive harm through exposures to DEHP, when they purchase, use or handle
13 Defendants’ vinyl/PVC bulb pumps and faux leather harnesses with vinyl/PVC bulb pumps.

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC bulb pumps and faux
15 leather harnesses with vinyl/PVC bulb pumps that Defendants manufacture, import, sell or distribute
16 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 offer
23 for sale, in and into California vinyl/PVC bulb pumps and faux leather harnesses with vinyl/PVC
24 bulb pumps (“**PRODUCTS**”) containing DEHP, without Proposition 65’s requisite health hazard
25 warning regarding the harms associated with exposures to the chemical, including, but not limited to,
26 *Inflatable Anal Plug Harness for Men, SKU: J402*. Defendants’ conduct subjects them to civil
27 penalties for each violation, enjoinder as well as preliminary and permanent injunctive relief. Health
28 & Saf. Code § 25249.7(a) and (b).

PARTIES

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

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

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

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

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

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

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

7 13. At all times mentioned herein, STOCKROOM, MANUFACTURER DEFENDANTS,
8 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
9 appropriate, be referred to collectively as the “DEFENDANTS.”

10 **JURISDICTION AND VENUE**

11 14. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
12 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
13 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
14 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
15 other trial courts.” The statute under which this action is brought does not specify any other basis of
16 subject matter jurisdiction.

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

25 16. Venue is proper in the Superior Court for the County of Marin, pursuant to Code of
26 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
27 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
28 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS

1 conducted, and continue to conduct, business in the County of Marin with respect to the PRODUCTS
2 that are the subject of this action.

3 **REGULATORY BACKGROUND AND LAW**

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

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

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

17 20. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
18 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. California
19 Code of Regulations (“CCR”), title 27, section 25102(i). An exposure to a hazardous chemical is
20 defined as one that “results from a person’s acquisition, purchase, storage, consumption or other
21 reasonably foreseeable use of a product...” 27 CCR § 25600(h).

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

25 22. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
26 California identified and listed DEHP as a chemical known to the State cause birth defects and
27 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one
28 year later, on October 24, 2004. 27 CCR § 27001(c); Health & Saf. Code §§ 25249.8, 25249.10(b).

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STATEMENT OF FACTS

23. DEFENDANTS’ PRODUCTS were sold in California without a clear and reasonable warning in violations of title 27, California Code of Regulations, section 25600, et seq.

24. DEFENDANTS’ PRODUCTS subject consumers in California to exposure to the DEHP at levels requiring a warning under Proposition 65, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and intended uses.

25. On September 13, 2022, plaintiff served a 60-Day Notice of Violation (“**Notice**”), together with the certificate of merit, on STOCKROOM, the California Attorney General’s Office, and the requisite public enforcers, alleging, as a result of DEFENDANTS’ sales of Faux Leather Harnesses, such as *Inflatable Anal Plug Harnesses for Men, SKU: J402*, consumers in the California were, and are, being exposed to DEHP through their reasonably foreseeable use of Faux Leather Harnesses as intended without first receiving a “clear and reasonable warning” required by Proposition 65.

26. Thereafter, on September 19, 2022, plaintiff served an Amended 60-Day Notice of Violation (“**Amended Notice**”), together with the certificate of merit, on STOCKROOM, the California Attorney General’s Office, and the requisite public enforcers, alleging, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and are, being exposed to DEHP through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a “clear and reasonable warning,” as required by Proposition 65. The Notice and Amended Notice are collectively referred to herein as the “**Notices.**”

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All DEFENDANTS)

28. KASB realleges and incorporates by reference, as if fully stated herein, the allegations set forth in Paragraphs 1 through 27, inclusive.

1 29. DEFENDANTS' PRODUCTS contain DEHP in levels requiring a clear and
2 reasonable warning under Proposition 65.

3 30. DEFENDANTS know or should have known the PRODUCTS they manufacture,
4 import, distribute, sell, and offer for sale in California contain DEHP. As a result of plaintiff's
5 Notices, DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

6 31. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
7 sale in or into the State of California cause exposures to DEHP, both direct and/or indirect dermal
8 contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

9 32. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
10 continues to cause, exposures to DEHP.

11 33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
12 exposes individuals to DEHP through direct and indirect dermal contact and/or ingestion.

13 34. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
14 of the PRODUCTS will occur by their deliberate, non-accidental participation in the California
15 marketplace.

16 35. The exposures to DEHP, caused by DEFENDANTS and endured by consumers in
17 California, are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

18 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
19 and other individuals in California who have been, or who will be, exposed to DEHP through direct
20 and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.

21 37. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
22 and other individuals, exposed to DEHP through dermal contact and ingestion as a result of their use
23 of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health hazard
24 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
25 or adequate remedy at law.

26 38. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
27 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
28 continued beyond their receipt of plaintiff's Notices. As such, DEFENDANTS' violations are

1 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

7 **PRAAYER FOR RELIEF**

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

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

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

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

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

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

22 Dated: December 5, 2023

Respectfully submitted,

23 SEVEN HILLS LLP

24
25 By: 

Laralei Paras

Attorneys for Plaintiff

Keep America Safe and Beautiful