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County of Santa Clara
23CV427734
Reviewed By: R. Cachux

1 Kimberly Gates Johnson State Bar No. 282369
2 Rebecca Jackson, State Bar No. 221583
3 Seven Hills LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 kimberly@sevenhillsllp.com
8 rebecca@sevenhillsllp.com

9 Attorneys for Plaintiff
10 KEEP AMERICA SAFE AND BEAUTIFUL

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

14 23CV427734

15 KEEP AMERICA SAFE AND BEAUTIFUL,
16 Plaintiff,
17 v.
18 GRADUS GROUP LLC; and DOES 1-30,
19 inclusive,
20 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 GRADUS GROUP LLC 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 the
6 People’s right to be informed of the health hazards caused by exposures to di(2-ethylhexyl) phthalate
7 (“**DEHP**”) and diisononyl phthalate (“**DINP**”), toxic chemicals found in and on the seats with
8 vinyl/PVC upholstery manufactured, imported, distributed, sold or offered for sale by Defendants in
9 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 and other reproductive harm through exposures to DEHP and DINP, when they purchase, use
14 or handle Defendants’ seats with vinyl/PVC upholstery.

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

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

23 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and offer
24 for sale, in and into California seats with vinyl/PVC upholstery (the “**PRODUCTS**”) containing
25 DEHP and DINP, without Proposition 65’s requisite health hazard warning regarding the harms
26 associated with exposures to the chemicals, including, but not limited to, *Impact® PS Posing Stool*
27 (*20-30”*); *MFR #RST-001*; *BH #IMPS*; *UPC: 847628012387*. Defendants’ conduct subjects them to
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1 civil penalties for each violation, enjoinder as well as preliminary and permanent injunctive relief.
2 Health & Safety Code § 25249.7(a) and (b).

3 **PARTIES**

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

11 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
12 GRADUS GROUP LLC (“**GRADUS GROUP**”) was and is a “person” “in the course of doing
13 business” with ten (10) or more employees, within the meanings of Health and Safety Code
14 §§ 25249.6 and 25249.11.

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

18 9. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
19 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
20 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
21 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
22 offered for sale or use in California.

23 10. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
24 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
25 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each
26 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
27 retailers for sale or use in the State of California
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1 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
2 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
3 **RETAILER DEFENDANTS**, and each of them, by and through their conduct, offer the **PRODUCTS**
4 for sale to individuals in the State of California.

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

11 13. At all times mentioned herein, **GRADUS GROUP, MANUFACTURER**
12 **DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS** shall,
13 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

14 **JURISDICTION AND VENUE**

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

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

1 through direct and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS
2 as intended.

3 38. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
4 and other individuals, exposed to DEHP and DINP through dermal contact and ingestion as a result of
5 their use of the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard
6 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
7 or adequate remedy at law.

8 39. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
9 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
10 continued beyond their receipt of plaintiff’s Notices. As such, DEFENDANTS’ violations are
11 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

17 **PRAYER FOR RELIEF**

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

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

25 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
26 and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain
27 of commerce in California that do not bear a clear and reasonable health hazard warning;
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3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;


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: December 14, 2023

Respectfully submitted,

SEVEN HILLS LLP

By: 

Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful