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8 KEEP AMERICA SAFE AND BEAUTIFUL

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County of Santa Clara
23CV417246
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

Fitness Ventures International LLC; and DOES
1-30, inclusive,

Defendants.

Case No. 23CV417246

**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 FITNESS VENTURES INTERNATIONAL 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 to enforce the People’s right to be informed of the health
6 hazards caused by exposures to diisononyl phthalate (“DINP”), a toxic chemical found in and on the
7 vinyl/PVC kettlebells sold by defendants in the State of California.

8 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
9 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
10 (“**consumers**”) they are being exposed to substances known to the State of California to cause birth
11 defects and other reproductive harm through exposures to DINP, present in and on vinyl/PVC
12 kettlebells manufactured, distributed, imported, sold and otherwise offered for sale or use throughout
13 the State of California by defendants when they utilize, touch or otherwise handle Defendants’
14 vinyl/PVC kettlebells.

15 3. Detectable levels of DINP are found in and on the vinyl/PVC kettlebells defendants
16 manufacture, import, sell or distribute for sale to individuals throughout the State of California.

17 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
18 Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course of
19 doing business to knowingly and intentionally expose consumers in California to chemicals known to
20 the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear and
21 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 kettlebells (“**PRODUCTS**”) containing DINP, without
24 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to the
25 chemical, including, but not limited to, the *CorMax KB (Set of 2) SIZE 6.3” x 11”*. Defendants’
26 conduct subjects them to civil penalties for each violation, enjoinder as well as preliminary and
27 permanent injunctive relief. Health & Saf. Code § 25249.7(a) and (b).
28

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 Health
8 & Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
10 FITNESS VENTURES INTERNATIONAL LLC (“**FITNESS VENTURES**”) was and is a “person”
11 “in the course of doing business” within the meanings of Health & Safety Code §§ 25249.6 and
12 25249.11.

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

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

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

1 for sale to individuals in the State of California.

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

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

11 **JURISDICTION AND VENUE**

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

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

26 16. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code of
27 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
28 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of

1 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
2 conducted, and continue to conduct, business in the County of Santa Clara with respect to the
3 PRODUCTS that are the subject of this action.

4 **REGULATORY BACKGROUND AND LAW**

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

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

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

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

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

26 22. On December 20, 2013, pursuant to Proposition 65, California identified and listed DINP
27 as a chemical known to cause cancer. DINP became subject to the “clear and reasonable warning”
28 requirements one year later, on December 20, 2014. 27 CCR § 27001(c); Health & Saf. Code

1 §§ 25249.8, 25249.10(b).

2 **STATEMENT OF FACTS**

3 23. Plaintiff purchased DEFENDANTS' PRODUCTS, without a warning, in California.

4 24. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, and
5 after consultation with a person with relevant and appropriate knowledge and expertise who reviewed
6 the collected data and analyzed the risk of exposures to DINP, determined the PRODUCTS expose
7 consumers in California to the listed chemical at levels requiring a warning under the statute, based
8 on consumers touching, handling or otherwise utilizing PRODUCTS in accordance with their
9 reasonably foreseeable and intended usages.

10 25. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting to a
11 reasonable and meritorious case for this private action and confidentially provided the requisite
12 privileged factual information supporting the certificate to the California Attorney General's Office.
13 Health & Saf. Code § 25249.7(d); Title 11 CCR § 3102.

14 26. Thereafter, on January 20, 2023, plaintiff served a 60-Day Notice of Violation
15 ("Notice"), together with the certificate of merit, on FITNESS VENTURES, the California Attorney
16 General's Office, and the requisite public enforcement agencies, alleging, as a result of
17 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being
18 exposed to DINP resulting from their reasonably foreseeable use of the PRODUCTS without first
19 receiving a "clear and reasonable warning," as required by Proposition 65.

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

23 **FIRST CAUSE OF ACTION**

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

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

27 29. DEFENDANTS' PRODUCTS contain DINP at levels requiring a clear and reasonable
28 warning under Proposition 65.

1 30. DEFENDANTS know or should have known the PRODUCTS they manufacture,
2 import, distribute, sell, and offer for sale in California contain DINP. As a result of plaintiff’s Notice,
3 DEFENDANTS were also informed of the presence of DINP in the PRODUCTS through Plaintiff’s
4 Notice.

5 31. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
6 sale in or into the State of California cause exposures to DINP, as a result of the reasonably
7 foreseeable use of the PRODUCTS through dermal contact and ingestion.

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

10 33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
11 exposes individuals to DINP through dermal contact and ingestion.

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

15 35. The exposures to DINP, caused by DEFENDANTS and endured by consumers in
16 California, are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

17 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
18 in California who have been, or who will be, exposed to DINP through dermal contact and ingestion
19 resulting from the reasonably foreseeable and intended uses of the PRODUCTS.

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

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

28 ///

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

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

6 **PRAYER FOR RELIEF**

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

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

14 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), issue preliminary and
15 permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of
16 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: June 6, 2023

Respectfully submitted,

SEVEN HILLS LLP

24
25 By: 
26 Laralei Paras, Esq.
27 Attorneys for Plaintiff
28 *Keep America Safe and Beautiful*