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Superior Court of CA,
County of Santa Clara
23CV418915
Reviewed By: Thao Phan

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KEEP AMERICA SAFE AND BEAUTIFUL

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 MELK ENTERPRISES, INC., and DOES 1-30,
15 inclusive,

16 Defendants.

23CV418915

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.)

Action is an Unlimited Civil Case

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
2 cause of action against MELK ENTERPRISES, INC. and Does 1-30, inclusive.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff KEEP AMERICA SAFE
5 AND BEAUTIFUL 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”), a chemical found in and on the storage boxes with vinyl/PVC components sold by
8 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”) that they are being exposed to substances known to the State of California to cause
12 cancer, birth defects and other reproductive harm through exposures to DEHP, present in and on
13 storage boxes with vinyl/PVC components manufactured, distributed, imported, marketed, sold and
14 otherwise offered for sale or use throughout the State of California by defendants and purchased, used
15 or handled by consumers.

16 3. Detectable levels of DEHP are found in and on wallets with vinyl/PVC ID windows
17 that defendants manufacture, import, ship, sell or distribute for sale to consumers throughout
18 California.

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

24 5. KEEP AMERICA SAFE AND BEAUTIFUL alleges that defendants manufacture,
25 distribute, import, ship, sell, and offer for sale, in or into California, the following products containing
26 DEHP without Proposition 65’s requisite health hazard warning regarding the harms associated with
27 exposures to the chemical: wallets with vinyl/PVC ID windows, such as the *Custom Gift Basket*,
28 *Item: 900125*, collectively referred to herein as hereinafter, the “PRODUCTS.” Defendants’ conduct

1 subjects it to civil penalties for each violation, as well as enjoinder and preliminary and permanent
2 injunctive relief. Health & Saf. Code §§ 25249.7(a) and (b).

3 **PARTIES**

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

12 7. Plaintiff is informed, believes and thereon alleges that, at all relevant times, MELK
13 ENTERPRISES, INC. (“MELK”), was and is a person in the course of doing business, with ten (10)
14 or more employees, within the meaning of Health & Saf. Code §§ 25249.6 and 25249.11.

15 8. MELK manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale
16 or use in the State of California, or implies by its conduct that it manufactures, imports, distributes,
17 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 in
19 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
20 MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or
21 each implies by its conduct that it does such, one or more of the PRODUCTS offered for sale or use
22 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

28 11. Defendants DOES 21-30 (“RETAILER DEFENDANTS”) are each a person in the

1 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
2 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the
3 State of California.

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

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

13 **JURISDICTION AND VENUE**

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

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

28 16. Venue is proper in the Superior Court for the County of Santa Clara pursuant to Code

1 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
2 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
3 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
4 conducted, and continue to conduct, business in the County of Santa Clara with respect to the
5 PRODUCTS that are the subject of this action.

6 **REGULATORY BACKGROUND AND LAW**

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

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

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

20 20. An exposure to a hazardous chemical is defined as one that “results from a person’s
21 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...” Cal.
22 Code Regs. (“CCR”) tit. 27, section 25600(h).

23 21. Proposition 65 provides that persons violating the statute may be enjoined in any court
24 of 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 October 24, 2003, pursuant to Proposition 65, California identified and listed
27 DEHP as a chemical known to cause cancer, birth defects, and reproductive harm. DEHP became
28 subject to the “clear and reasonable warning” requirements one year later, on October 24, 2004. 27

1 CCR § 27001(c); Health & Saf. Code §§ 25249.8, 25249.10(b).

2 **STATEMENT OF FACTS**

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

9 24. Plaintiff purchased the PRODUCTS without a warning in California.

10 25. DEFENDANTS, and each of them, are persons in the course of doing business.

11 26. Based on the foregoing, Plaintiff's attorney executed certificates of merit, attesting
12 there was a reasonable and meritorious case for this private action, and included the factual
13 information supporting the certificates when it served the Notice on the California Attorney General's
14 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

15 27. Thereafter, on January 13, 2023, plaintiff served a 60-Day Notice of Violation
16 ("Notice"), together with the requisite certificate of merit, on MELK CORPORATION DBA
17 SANDPIPER OF CALIFORNIA, SANDPIPER OF CALIFORNIA, the California Attorney
18 General's Office, and the requisite public enforcement agencies, alleging that, as a result of
19 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were and are being
20 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS without first
21 receiving a "clear and reasonable warning," as required by Proposition 65.

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

25 **FIRST CAUSE OF ACTION**

26 **(Violation of Proposition 65)**

27 29. KEEP AMERICA SAFE AND BEAUTIFUL realleges and incorporates by reference,
28 as if fully stated herein, the allegations set forth in Paragraphs 1 through 30, inclusive.

1 30. DEFENDANTS' PRODUCTS contain DEHP in levels that require a clear and
2 reasonable warning under Proposition 65.

3 31. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
4 import, distribute, ship, sell, and offer for sale in California contain DEHP. DEFENDANTS were also
5 informed of the presence of DEHP in the PRODUCTS through Plaintiff's Notice.

6 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, ship, sell, and
7 offer for sale or use in California cause exposures to DEHP, as a result of the reasonably foreseeable
8 use of the PRODUCTS, through dermal contact and/or ingestion.

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

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

13 35. 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 36. The exposures to DEHP, caused by DEFENDANTS and endured by consumers and
17 other individuals in California, are not exempt from the "clear and reasonable" warning requirements
18 of Proposition 65.

19 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
20 in California who have been, or who will be, exposed to DEHP through dermal contact and/or
21 ingestion resulting from their use of the PRODUCTS.

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

27 39. DEFENDANTS manufacture, import, distribute, ship, sell, and offer the PRODUCTS
28 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations

1 have continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
2 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

8 **PRAYER FOR RELIEF**

9 Wherefore, KEEP AMERICA SAFE AND BEAUTIFUL prays for relief and judgment
10 against DEFENDANTS, as follows:

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

15 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
16 and permanent injunctions mandating DEFENDANTS, and each of them, to recall all PRODUCTS
17 sold to consumers in California without a "clear and reasonable warning;"


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

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

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

23 Dated: July 10, 2023

Respectfully submitted,

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