

1 Troy C. Bailey, State Bar No. 277424
2 Josh Voorhees, State Bar No. 241436
3 VOORHEES & BAILEY, LLP
4 535 Ramona Street; Suite 5
5 Palo Alto, CA 94301
6 Telephone: (650) 815-6022
7 Facsimile: (650) 618-1606
8 troy@voorheesbailey.com
9 josh@voorheesbailey.com

10 Attorneys for Plaintiff
11 AUDREY KALLANDER

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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15 CITY AND COUNTY OF SANTA CLARA
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17 UNLIMITED CIVIL JURISDICTION
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19 AUDREY KALLANDER,

20 Plaintiff,

21 v.

22 NINGBO VONTONE STATIONERY CO.
23 LTD.; and DOES 1-150, inclusive,

24 Defendants.
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E-FILED

6/6/2023 8:19 AM

Clerk of Court

Superior Court of CA,

County of Santa Clara

23CV417176

Reviewed By: N. Christopherson

23CV417176

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by Plaintiff AUDREY
3 KALLANDER in the public interest of the citizens of the State of California to enforce the People's
4 right to be informed of the health hazards caused by exposures to di(2-ethylhexyl) phthalate
5 ("DBP"), a toxic chemical found in bike locks with PVC components containing DBP sold by
6 defendants in California.

7 2. By this Complaint, Plaintiff seeks to remedy defendants' continuing failure to warn
8 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,
9 who purchase, use or handle defendants' products, about the risks of exposure to DBP present in the
10 bike locks with PVC components containing DBP that defendants manufacture, distribute and offer
11 for sale or use throughout the State of California. Individuals not covered by California's
12 Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle
13 defendants' products, are referred to hereinafter as "consumers."

14 3. Detectable levels of DBP are found in the bike locks with PVC components that
15 defendants manufacture, distribute, and offer for sale to consumers throughout the State of
16 California.

17 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
18 Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing
19 business shall knowingly and intentionally expose any individual to a chemical known to the state to
20 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
21 individual..." Health & Safety Code § 25249.6.

22 5. Pursuant to Proposition 65, on December 2, 2005, California listed DBP as a chemical
23 known to cause birth defects and other reproductive harm. DBP became subject to the "clear and
24 reasonable warning" requirements of the act one year later, on December 2, 2006. Cal. Code Regs.
25 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
27 hazard warnings in California, the *Caliber Bike Lock*, UPC: 0 50428 64609 0, hereinafter referred to
28 as the "PRODUCTS."

7. Defendants' failure to warn consumers in the State of California of the health hazards associated with exposures to DBP in conjunction with defendants' sale of the PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8. For defendants' violations of Proposition 65, Plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the required warning regarding the health hazards associated with exposures to DBP. Health & Safety Code § 25249.7(a).

9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65.

PARTIES

10. Plaintiff AUDREY KALLANDER is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products; and he brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant NINGBO VONTONE STATIONERY CO. LTD. (“NINGBO VONTONE”) is a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

12. NINGBO VONTONE 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.

13. Defendants DOES 1-50 (“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.

14. MANUFACTURER DEFENDANTS, and each of them, research, test, design, assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in California.

15. Defendants DOES 51-100 (“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.

16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California, or each implies by its conduct that it distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California.

17. Defendants DOES 101-150 (“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.

18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the State of California.

19. At this time, the true names of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

20. NINGBO VONTONE, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

VENUE AND JURISDICTION

21. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with respect to the PRODUCTS.

22. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

23. The California Superior Court has jurisdiction over DEFENDANTS based on Plaintiff's information and good faith belief that each of the DEFENDANTS are a person, firm, corporation or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 23, inclusive.

25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual....” Health & Safety Code § 25249.6.

27. On December 13, 2022, Kallander served CVS Pharmacy, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (“December Notice”), alleging that the notice recipient violated Proposition 65 by failing to warn customers and consumers in California of the health hazards associated with exposures to DBP from the PRODUCTS. NINGBO VONTONE was subsequently identified as the manufacturer/supplier of the PRODUCTS.

1 28. On February 16, 2023, Kallander served NINGBO VONTONE and the requisite public
2 enforcement agencies with a 60-Day Notice of Violation of the Safe Drinking Water and Toxic
3 Enforcement Act of 1986 (“February Notice”), alleging that the notice recipients violated Proposition
4 65 by failing to warn customers and consumers in California of the health hazards associated with
5 exposures to DBP from the PRODUCTS.

6 29. The December Notice and February Notice shall hereinafter collectively be referred to
7 as the “Notices.”

8 30. 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 the Notices. As such, DEFENDANTS’ violations are ongoing and
11 continuous and, unless enjoined, will continue in the future.

12 31. After receiving the Notices, no public enforcement agency has commenced and
13 diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the
14 alleged violations that are the subject of the Notices.

15 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
16 for sale or use in California cause exposures to DBP as a result of the reasonably foreseeable use of
17 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
18 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

19 33. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
20 distribute, sell, and offer for sale in California contain DBP.

21 34. DBP is present on the PRODUCTS in such a way as to expose consumers through
22 dermal contact and/or ingestion during reasonably foreseeable use.

23 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
24 continues to cause, consumer exposures to DBP, as defined by title 27 of the California Code of
25 Regulations, section 25602(b).

26 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
27 PRODUCTS exposes individuals to DBP through dermal contact and/or ingestion.
28

37. DEFENDANTS intend that exposures to DBP from the reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in California.

38. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers in California who have been, or will be, exposed to DBP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to DBP;

3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the

1 chain of commerce in California without a “clear and reasonable warning” as defined by California
2 Code of Regulations title 27, section 25601 et seq.;

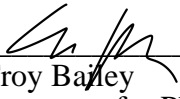
3 4. That the Court grant Plaintiff her reasonable attorneys’ fees and costs of suit; and

4 5. That the Court grant such other and further relief as may be just and proper.

5 Dated: June 6, 2023

Respectfully submitted,

6 VOORHEES & BAILEY, LLP

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9 By: _____
10 Troy Bailey
11 Attorneys for Plaintiff
12 AUDREY KALLANDER
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