

Marin Superior Court Accepted through eDelivery submitted 12-11-2023 at 02:14:19 PM

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**ELECTRONICALLY FILED**  
Superior Court of California  
County of Marin  
~~FILED~~  
James M. Kim, Clerk of the Court  
D. Harrison, Deputy

Attorneys for Plaintiff  
KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,  
  
Plaintiff,  
  
v.  
  
VANGUARD INDUSTRIES EAST, INC.; and  
DOES 1-30, inclusive,  
  
Defendants.

Case No. ~~03CEEF111~~  
**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

CASE #:CV0001548 RECEIPT #: EJT112298 DATE PAID : 12/12/23 9:22 AM TOTAL : 435.00 TYPE : EFT

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a  
2 cause of action against Defendants VANGUARD INDUSTRIES EAST, 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 identification tags with vinyl/PVC windows  
8 manufactured, imported, 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’ identification tags with vinyl/PVC windows.

14 3. Detectable levels of DEHP are found in and on the identification tags with vinyl/PVC  
15 windows that Defendants manufacture, import, sell or distribute for sale to individuals throughout  
16 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  
23 offer for sale, in and into California identification tags with vinyl/PVC windows (“**PRODUCTS**”)  
24 containing DEHP, without Proposition 65’s requisite health hazard warning regarding the harms  
25 associated with exposures to the chemical, including, but not limited to, *Identification Tag Card*  
26 *Holder: Vertical with Hook Closure Straps, SKU: 9701762, UPC: 024768114830*. Defendants’  
27 conduct subjects them to civil penalties for each violation, enjoinder as well as preliminary and  
28 permanent injunctive relief. Health & 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 VANGUARD INDUSTRIES EAST, INC. (“**VANGUARD**”) 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. VANGUARD 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 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. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and  
5 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o  
6 person in the course of doing business shall knowingly and intentionally expose any individual to a  
7 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable  
8 warning to such individual...”

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

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

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

21 21. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,  
22 California identified and listed DEHP as a chemical known to the State cause birth defects and  
23 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one  
24 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**

22. 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.

23. 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.

24. On April 21, 2023, plaintiff served a 60-Day Notice of Violation (“Notice”), together with the certificate of merit, on VANGUARD, the California Attorney General’s Office, and the requisite public enforcers, alleging, as a result of DEFENDANTS’ sales of Identification Tags with vinyl/PVC Windows, such as *Identification Tag Card Holder: Vertical with Hook Closure Straps, SKU: 9701762, UPC: 024768114830*, consumers in the California were, and are, being exposed to DEHP through their reasonably foreseeable use of Identification Tags with vinyl/PVC Windows as intended without first receiving a “clear and reasonable warning” required by Proposition 65.

25. After receiving plaintiff’s Notice, 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 Notice.

**FIRST CAUSE OF ACTION**

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

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

27. DEFENDANTS’ PRODUCTS contain DEHP in levels requiring a clear and reasonable warning under Proposition 65.

28. DEFENDANTS know or should have known the PRODUCTS they manufacture, import, distribute, sell, and offer for sale in California contain DEHP. As a result of plaintiff’s Notice, DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

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

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

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

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

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

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

35. Contrary to the express policy and statutory prohibition of Proposition 65, consumers and other individuals, exposed to DEHP through dermal contact and ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold 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.

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

37. 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.

38. 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.

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1 **PRAAYER FOR RELIEF**

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

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

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

11 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the  
12 amount of \$2,500 for each sale of the PRODUCTS without the warning required under Proposition  
13 65, in an amount to be determined at trial;

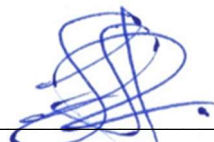
14 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred  
15 herein; and

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

17 Dated: December 11, 2023

Respectfully submitted,

18 SEVEN HILLS LLP

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20 By:  \_\_\_\_\_

21 Laralei Paras  
22 Attorneys for Plaintiff  
23 *Keep America Safe and Beautiful*  
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