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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

10/16/2023
Clerk of the Court
BY: KALENE APOLONIO
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

CGC-23-609803

13 KEEP AMERICA SAFE AND BEAUTIFUL,

14 Plaintiff,

15 v.

16 ABB INC.; and DOES 1-30,
17 inclusive,

18 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 ABB 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 the
6 People’s right to be informed of the health hazards caused by exposures to diisononyl phthalate
7 (“**DINP**”), a toxic chemical found in and on tools with vinyl/PVC grips sold by defendants in the
8 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 who purchase, use or handle defendants’ products about the risks of exposure to DINP, a substance
12 known to the State of California (“**California**” or “**State**”) to cause cancer and present in an on the
13 tools with vinyl/PVC grips manufactured, imported, distributed, sold or offered for sale or use
14 throughout the State by defendants. Individuals not covered by California’s Occupational Safety
15 Health Act, Labor Code § 6300 *et seq.* who purchase, use or handle defendants’ products are referred
16 to, hereinafter, as “**consumers**”.

17 3. Detectable levels of DINP are found in and on the tools with vinyl/PVC grips
18 defendants manufacture, import, distribute, sell or offer for sale or use to individuals and consumers
19 throughout the State.

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

25 5. KASB contends and alleges defendants manufacture, import, distribute, sell or offer
26 for sale, in or into California, tools with vinyl/PVC grips containing DINP without Proposition 65’s
27 requisite health hazard warning about the presence of, and the harms associated with, exposures to
28 the chemical DINP, including, but not limited to, the *WT110M STA-KON® Terminal Installing Tool*

1 *Cat. No. 3KH44 UPC: 7 86210 94157 8* (referred to, hereinafter, as the “**PRODUCTS**”).

2 Defendants’ conduct subjects them to civil penalties for each violation, as well an enjoinder and
3 preliminary and permanent injunctive relief. Health & Safety Code §§ 25249.7(a) and (b).

4 **PARTIES**

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

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

15 3. ABB 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 4. 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 impliedly does so by its conduct one or more of the PRODUCTS offered for
22 sale or use in California.

23 5. 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.

28 6. 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 or use to individuals
3 and consumers in California.

4 7. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
5 unknown to plaintiff, who, therefore, sues said DEFENDANTS by their fictitious names, pursuant to
6 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of
7 the 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 8. At all times mentioned herein, ABB, 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 9. 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 10. The California Superior Court has jurisdiction over DEFENDANTS based on
21 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or
22 association that is a citizen of the State of California, does sufficient business in California, have
23 sufficient minimum contacts in the State, and/or otherwise purposefully and intentionally avail
24 themselves of the California market through their manufacture, importation, distribution, promotion,
25 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders
26 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
27 play and substantial justice.

28 11. Venue is proper in the Superior Court for the City and County of San Francisco

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

6 **REGULATORY BACKGROUND AND LAW**

7 12. 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 13. 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 “[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 14. 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 known to cause cancer without first giving a “clear and
19 reasonable” health hazard warning when those chemicals exceed State-mandated safe harbor levels.
20 Health & Safety Code § 25249.6

21 15. An exposure to a hazardous chemical is defined as one that “results from a person’s
22 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
23 27 C.C.R. § 25600(h).

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

27 17. Proposition 65 provides three exemptions from the warning requirement, pursuant to
28 Health & Safety Code § 25249.10. No warning is required where: (1) Federal law governs manner

1 of warning such that the Statute is preempted; (2) an exposure taking place less than twelve months
2 after a chemical is first listed; or (3) an exposure which the defendant “can show the exposure poses
3 no significant risk assuming lifetime exposure at the level in question for substances known to the
4 state to cause cancer based on evidence and standards of comparable scientific validity to the
5 evidence and standards which form the scientific basis for the listing of such chemical pursuant to
6 subdivision (a) of Section 25249.8.”

7 18. Pursuant to Health & Safety Code § 25249.10(c), the burden of proof, or the burden to
8 demonstrate an exposure does not pose a significant risk based on a lifetime of exposure, is on the
9 defendant,

10 19. On December 20, 2013, pursuant to Health & Safety Code § 25249.8, California
11 identified and listed DINP as a chemical known to cause cancer, based on evidence clearly showing,
12 through scientifically valid and accepting testing practices, the chemical causes cancer. DINP
13 became subject to the “clear and reasonable warning” requirements one year later, on December 20,
14 2014. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

15 20. On February 8, 2016, the Office of Administrative Law approved the amendment of
16 Title 27, California Code of Regulations, § 25705, Specific Regulatory Levels Posing No Significant
17 Risk for DINP, effective as of April 1, 2016, and establishing a No Significant Risk Level (“NSRL”)
18 of 146 micrograms per day.

19 21. Products exceeding the NSRL require a warning detailing the health hazards
20 associated with the purchase, handling or use of such products. 27 Cal. Code of Regs. § 25705.

21 **STATEMENT OF FACTS**

22 22. Plaintiff purchased, or caused to be purchased, the PRODUCT without a warning in
23 the state of California.

24 23. Plaintiff’s attorney reviewed the testing and expert analysis, and, after assessing
25 whether any of the exemptions to the warning requirement applied and finding they did not, executed
26 a certificate of merit, attesting there was a reasonable and meritorious case for this private action and
27 including the factual information supporting the certificate, subsequently served on the California
28 Attorney General’s Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

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

3 33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
4 exposes individuals to DINP through dermal contact and/or ingestion.

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

8 35. The exposures to DINP, caused by DEFENDANTS and endured by consumers and
9 other individuals in the State, are not exempt from the “clear and reasonable” warning requirements
10 of Proposition 65.

11 36. DEFENDANTS failed to provide a “clear and reasonable warning” to consumers and
12 other individuals in California who have been, or who will be, exposed to DINP through dermal
13 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

26 40. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
27 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.
28

1 **PRAYER 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, selling or otherwise
6 offering the PRODUCTS for sale or use to consumers in California without first providing a “clear
7 and reasonable warning” regarding the harms associated with exposures to DINP;

8 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
9 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
10 chain of commerce in California without a “clear and reasonable warning”;

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

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

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

16 Dated: October 16, 2023

Respectfully submitted,

SEVEN HILLS LLP

17
18
19 By: 

20 Kimberly Gates Johnson
21 Attorneys for Plaintiff
22 *Keep America Safe and Beautiful*