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10 KEEP AMERICA SAFE AND BEAUTIFUL

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION

13 KEEP AMERICA SAFE AND BEAUTIFUL,

14 Plaintiff,

15 v.

16 CENTRAL GARDEN & PET COMPANY; and
17 DOES 1-30, inclusive,

18 Defendants.

Case No.

CGC-24-613973

**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

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

04/16/2024
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL (“KASB”), acting in the public
2 interest, alleges a cause of action against Defendants CENTRAL GARDEN & PET COMPANY and
3 Doe Defendants Nos. 1-30 (“Defendants”) for their violations of Health & Safety Code § 25249.5, *et*
4 *seq.*, as follows:

5 **INTRODUCTION AND NATURE OF THE ACTION**

6 1. KASB brings this representative action in the public interest of the citizens of the State
7 of California to enforce the People’s right to be informed of the health hazards caused by exposures
8 to di(2-ethylhexyl) phthalate (“**DEHP**”), a toxic chemical found in tools with vinyl/PVC grips
9 manufactured, imported, distributed, sold or offered for sale by Defendants in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
12 (“**consumers**”) they are being exposed to substances known to the State of California to cause birth
13 defects or other reproductive harm through exposures to DEHP, when they purchase, use or handle
14 Defendants’ tools with vinyl/PVC grips.

15 3. Detectable levels of DEHP are found in and on the tools with vinyl/PVC grips
16 Defendants manufacture, import, sell or distribute for sale in 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 and end-users in California to
20 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first
21 providing a “clear and reasonable” warning to such individuals prior to purchase or use.

22 5. Defendants manufacture, distribute, import, sell, and offer for sale, in and into
23 California tools with vinyl/PVC grips (“**PRODUCTS**”) containing DEHP, without providing a clear
24 and reasonable warning regarding the presence of and the harms associated with exposures to the
25 chemical, including, but not limited to, *Four Paws Magic Coat® Professional Series Cat Nail*
26 *Clipper, UPC 0 45663 11455 8*. Defendants’ conduct subjects them to civil penalties for each
27 violation, enjoinder as well as preliminary and permanent injunctive relief. Health & Saf. Code
28 § 25249.7(a) and (b).

1 **PARTIES**

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

9 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
10 CENTRAL GARDEN & PET COMPANY was and is a “person” “in the course of doing business”
11 with ten (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and
12 25249.11.

13 8. CENTRAL GARDEN & PET COMPANY manufactures, imports, distributes, sells,
14 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that
15 it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State
16 of California.

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

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

27 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
28 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

1 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
2 for sale to individuals in the State of California.

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

9 13. At all times mentioned herein, CENTRAL GARDEN & PET COMPANY,
10 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER
11 DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the
12 “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 DEFENDANTS are each a person, firm, corporation or
22 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 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.

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

7 **REGULATORY BACKGROUND AND LAW**

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

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

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

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

25 21. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
26 California identified and listed DEHP as a chemical known to the State cause birth defects and
27 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one
28

1 year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
2 §§ 25249.8, 25249.10(b).

3 **STATEMENT OF FACTS**

4 22. DEFENDANTS sell and offer their PRODUCTS for sale in California without a clear
5 and reasonable warning in violation of Cal. Code Regs. Tit. 27, § 25600, *et seq.*

6 23. DEFENDANTS' PRODUCTS expose consumers and end-users in California to DEHP at
7 levels requiring a warning under Proposition 65 when they touch, handle or otherwise contact the
8 PRODUCTS during reasonably foreseeable and intended use.

9 24. On July 3, 2023, plaintiff served a 60-Day Notice of Violation (“**Notice**”), together
10 with the certificate of merit, on CENTRAL GARDEN & PET COMPANY, the Office of the
11 California Attorney General, and all the requisite public enforcement agencies, alleging, as a result of
12 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being
13 exposed to DEHP through their reasonably foreseeable use of the PRODUCTS as intended without
14 first receiving a “clear and reasonable warning,” as required by Proposition 65.

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

18 **FIRST CAUSE OF ACTION**

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

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

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

24 28. DEFENDANTS know or should have known their PRODUCTS contain DEHP. As a
25 result of plaintiff's Notice, DEFENDANTS also have actual knowledge of the presence of DEHP in
26 the PRODUCTS.

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28

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

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

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

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

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

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

17 35. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
18 and other individuals, exposed to DEHP through dermal contact and ingestion as a result of their use
19 of the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard
20 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
21 or adequate remedy at law.

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

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

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

3 **PRAYER FOR RELIEF**

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

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

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

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

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

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

18 Dated: April 15, 2024

Respectfully submitted,

19 SEVEN HILLS LLP

20
21 By:



Laralei Paras

Attorneys for Plaintiff

Keep America Safe and Beautiful