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Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV427413
Reviewed By: M. Dominguez

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10 KEEP AMERICA SAFE AND BEAUTIFUL

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA – UNLIMITED CIVIL JURISDICTION

13 KEEP AMERICA SAFE AND BEAUTIFUL,
14 Plaintiff,
15 v.
16 DESE ENTERPRISE, INC.; and DOES 1-30,
17 inclusive,
18 Defendants.

19 Case No. 23CV427413
20 **COMPLAINT FOR CIVIL PENALTIES
21 AND INJUNCTIVE RELIEF**
22 Violation of Proposition 65, The Safe
23 Drinking Water and Toxic Enforcement Act of
24 1986 (Health & Safety Code § 25249.5 *et*
25 *seq.*)
26 UNLIMITED CIVIL

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
2 cause of action against Defendants DESE ENTERPRISE, INC., and DOES 1 through 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 di(2-ethylhexyl) phthalate
7 (“**DEHP**”) and di-n-butyl phthalate (“**DBP**”), toxic chemicals found in and on the faux leather
8 costume accessories manufactured, imported, distributed, sold or offered for sale by Defendants in
9 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 and other reproductive harm through exposures to DEHP and DBP, when they purchase, use
14 or handle Defendants’ faux leather costume accessories.

15 3. Detectable levels of DEHP and DBP are found in and on the faux leather costume
16 accessories Defendants manufacture, import, distribute or sell to consumers throughout 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 offer
23 for sale, in and into California faux leather costume accessories (“**PRODUCTS**”) containing DEHP
24 and DBP, without Proposition 65’s requisite health hazard warning regarding the harms associated
25 with exposures to the chemical, including, but not limited to, *Sexy Black Faux Leather Faux Fur*
26 *Handcuffs, KK89A-4119, Black*. 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 acting in the interest of the general public, dedicated to increasing public awareness of toxic
4 chemicals utilized in manufacturing consumer products. KASB is a person within the meaning of
5 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to
6 Health and Safety Code § 25249.7(d).

7 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
8 DESE ENTERPRISE, INC. (“**DESE**”) was and is a “person” “in the course of doing business” within
9 the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

10 8. DESE manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale
11 or use in the State of California, or implies by its conduct that it manufactures, imports, distributes,
12 sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

18 10. Defendants DOES 11-20 (“**DISTRIBUTOR 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 **DISTRIBUTOR DEFENDANTS**, and each of them, distribute, transfer, and transport, or each
21 impliedly does so by its conduct, one or more of the PRODUCTS to consumers, businesses, or
22 retailers for sale or use in the State of California

23 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
24 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
25 **RETAILER DEFENDANTS**, and each of them, by and through their conduct, offer the PRODUCTS
26 for sale to consumers in the State of California.

27 12. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
28 unknown to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant

1 to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of
2 the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged
3 herein and the damages caused thereby. When ascertained, their true names and capacities shall be
4 reflected in an amended complaint.

5 13. At all times mentioned herein, DESE, MANUFACTURER DEFENDANTS,
6 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
7 appropriate, be referred to collectively as the “DEFENDANTS.”

8 JURISDICTION AND VENUE

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

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

23 16. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code
24 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
25 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
26 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
27 conducted, and continue to conduct, business in the County of Santa Clara with respect to the
28 PRODUCTS that are the subject of this action.

1 **REGULATORY BACKGROUND AND LAW**

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

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

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

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

19 21. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
20 California identified and listed DEHP as a chemical known to the State cause birth defects and
21 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one
22 year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Saf. Code §§ 25249.8,
23 25249.10(b).

24 22. On December 2, 2005, pursuant to Proposition 65, California identified and listed DBP
25 as a chemical known to cause birth defects and reproductive harm. DBP became subject to the “clear
26 and reasonable warning” requirements one year later on December 2, 2006. 27 CCR § 27001(c);
27 Health & Saf. Code §§ 25249.8, 25249.10(b).

28 23. DEHP and DBP are collectively referred to hereinafter as “**Listed Phthalates.**”

1 **STATEMENT OF FACTS**

2 24. DEFENDANTS' PRODUCTS were sold in California without a clear and reasonable
3 warning in violations of Cal. Code Regs., tit. 27, § 25600, et seq.

4 25. On September 26, 2023, plaintiff served a 60-Day Notice of Violation ("Notice"),
5 together with the certificate of merit, on DESE, the California Attorney General's Office, and the
6 requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales of the
7 PRODUCTS, consumers in the State of California were, and are, being exposed to Listed Phthalates
8 through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a
9 "clear and reasonable warning," as required by Proposition 65.

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

13 **FIRST CAUSE OF ACTION**

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

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

17 28. DEFENDANTS' PRODUCTS contain Listed Phthalates in levels requiring a clear and
18 reasonable warning under Proposition 65.

19 29. DEFENDANTS know or should have known the PRODUCTS they manufacture,
20 import, distribute, sell, and offer for sale in California contain Listed Phthalates. As a result of
21 plaintiff's Notice, DEFENDANTS also have actual knowledge of the presence of Listed Phthalates in
22 the PRODUCTS.

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

26 31. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
27 continues to cause, exposures to Listed Phthalates.

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1 32. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
2 exposes consumers to Listed Phthalates through direct and indirect dermal contact and/or ingestion.

3 33. DEFENDANTS intend that exposures to Listed Phthalates from the reasonably
4 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
5 California marketplace.

6 34. The exposures to Listed Phthalates, caused by DEFENDANTS and endured by
7 consumers in California, are not exempt from the “clear and reasonable” warning requirements of
8 Proposition 65.

9 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
10 in California who have been, or who will be, exposed to Listed Phthalates through direct and indirect
11 dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.

12 36. Contrary to the express policy and statutory prohibition of Proposition 65, consumers,
13 exposed to Listed Phthalates through dermal contact and ingestion as a result of their use of the
14 PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard warning, have
15 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate
16 remedy at law.

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

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

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

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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, 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 Listed
8 Phthalates;

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

12 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the
13 amount of \$2,500 for each sale of the PRODUCTS without the warning required under Proposition
14 65, in an amount to be determined at trial;

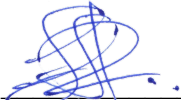
15 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
16 herein; and

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

18 Dated: December 11, 2023

Respectfully submitted,

19 SEVEN HILLS LLP

20
21 By: 
22 Laralei Paras
23 Attorneys for Plaintiff
24 *Keep America Safe and Beautiful*