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8 KEEP AMERICA SAFE AND BEAUTIFUL

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN – UNLIMITED CIVIL JURISDICTION

11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 ROMA COSTUME, INC.; and DOES 1-30,
15 inclusive,

16 Defendants.

Case No. CV0003716

**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 ROMA COSTUME, 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 di(2-ethylhexyl) phthalate
7 (“**DEHP**”), a toxic chemical found in and on the vinyl/PVC apparel and vinyl/PVC gloves
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 and other reproductive harm through exposures to DEHP, when they purchase, use or handle
13 Defendants’ vinyl/PVC apparel and vinyl/PVC gloves.

14 3. Detectable levels of DEHP are found in and on vinyl/PVC apparel and vinyl/PVC
15 gloves that Defendants manufacture, import, sell or distribute for sale to consumers 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 consumers 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 vinyl/PVC apparel and vinyl/PVC gloves (“**PRODUCTS**”) containing
24 DEHP, without Proposition 65’s requisite health hazard warning regarding the harms associated with
25 exposures to the chemical, including, but not limited to: *Clear Vinyl Flare Skirt with Suspenders*
26 *Item: 6100-Wht-S UPC: 0 19468 55249 5*; and *Pair of Gloves with Rhinestone Detail Item: GL101-*
27 *White-O/S UPC: 8 43952 01126 3*. Defendants’ conduct subjects them to civil penalties for each
28

1 violation, enjoinder as well as preliminary and permanent injunctive relief. Health & Saf. Code
2 § 25249.7(a) and (b).

3 **PARTIES**

4 6. Plaintiff KASB is a non-profit corporation organized under the laws of California and
5 acting in the public interest to protect the health of California citizens through the reduction of toxic
6 chemicals utilized in manufacturing consumer products and to increasing public awareness of those
7 chemicals. KASB is a person within the meaning of Health & Safety Code § 25249.11(a), and it
8 brings this action in the public interest, pursuant to Health and Safety Code § 25249.7(d).

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

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

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

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

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

1 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
2 for sale to consumers 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 of
6 the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged
7 herein and the damages caused thereby. When ascertained, their true names and capacities shall be
8 reflected in an amended complaint.

9 13. At all times mentioned herein, ROMA, MANUFACTURER DEFENDANTS,
10 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
11 appropriate, be referred to collectively as the “**DEFENDANTS.**”

12 **JURISDICTION AND VENUE**

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

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

27 16. Venue is proper in the Superior Court for the County of Marin, pursuant to Code of
28 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,

1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
2 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
3 conducted, and continue to conduct, business in the County of Marin with respect to the PRODUCTS
4 that are the subject of this action.

5 **REGULATORY BACKGROUND AND LAW**

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

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

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

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

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

1 **STATEMENT OF FACTS**

2 22. DEFENDANTS' PRODUCTS were sold in California without a clear and reasonable
3 warning in violation of title 27, California Code of Regulations, section 25600, et seq.

4 23. DEFENDANTS' PRODUCTS subject consumers in California to exposure to the listed
5 chemical at levels requiring a warning under the statute, based on touching, handling, or otherwise
6 utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.

7 24. On August 3, 2023, plaintiff served a 60-Day Notice of Violation ("**Notice**"), together
8 with the certificate of merit, on ROMA, the California Attorney General's Office, and the other
9 requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales of vinyl/PVC
10 apparel, consumers in the State of California were, and are, being exposed to DEHP through their
11 reasonably foreseeable use of the PRODUCTS as intended without first receiving a "clear and
12 reasonable warning," as required by Proposition 65.

13 25. On September 26, 2023, plaintiff served a Supplemental 60-Day Notice of Violation
14 ("**Supplemental Notice**"), together with the certificate of merit, on ROMA, the California Attorney
15 General's Office, and the requisite public enforcement agencies, alleging, as a result of
16 DEFENDANTS' sales of the vinyl/PVC apparel and vinyl/PVC gloves, consumers in the State of
17 California were, and are, being exposed to DEHP through their reasonably foreseeable use of the
18 PRODUCTS as intended without first receiving a "clear and reasonable warning," as required by
19 Proposition 65.

20 26. The Notice and the Supplemental Notice are collectively referred to hereinafter as the
21 "**Notices**".

22 27. After receiving plaintiff's Notices, no public enforcement agency has commenced and
23 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
24 the alleged violations that are the subject of the Notices.

25 **FIRST CAUSE OF ACTION**

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

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

1 29. DEFENDANTS' PRODUCTS contain DEHP in levels requiring a clear and
2 reasonable warning under Proposition 65.

3 30. DEFENDANTS know or should have known the PRODUCTS they manufacture,
4 import, distribute, sell, and offer for sale in California contain DEHP. As a result of plaintiff's
5 Notices, DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

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

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

11 33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
12 exposes consumers to DEHP through direct and indirect dermal contact and/or ingestion.

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

16 35. The exposures to DEHP, caused by DEFENDANTS and endured by consumers in
17 California, are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

18 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
19 in California who have been, or who will be, exposed to DEHP through direct and indirect dermal
20 contact and/or ingestion resulting from the use of the PRODUCTS as intended.

21 37. Contrary to the express policy and statutory prohibition of Proposition 65, consumers,
22 exposed to DEHP through dermal contact and ingestion as a result of their use of the PRODUCTS
23 that DEFENDANTS sold without a "clear and reasonable" health hazard warning, have suffered, and
24 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

