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**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
01/21/2025
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

6 Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

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

Case No. **CGC-25-621608**

**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 PAC-DENT, 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 pouches with vinyl/PVC components manufactured,
8 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’ pouches with vinyl/PVC components.

14 3. Detectable levels of DEHP are found in and on the pouches with vinyl/PVC
15 components 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 offer
23 for sale, in and into California pouches with vinyl/PVC components (“**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, *iBrite Take-Home Tooth Whitening System,*
26 *6% H2O2 Pro Strength, PAC-IB-806H, Lot No. 20180726.* Defendants’ conduct subjects them to
27 civil penalties for each violation, enjoinder as well as preliminary and permanent injunctive relief.
28 Health & Safety Code § 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 PAC-DENT, INC. (“**PAC-DENT**”) was and is a “person” “in the course of doing business” with ten
11 (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

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

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

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

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

1 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
2 respect to the PRODUCTS that are the subject of this action.

3 **REGULATORY BACKGROUND AND LAW**

4 17. In 1986, the people of the State of California approved an initiative addressing the
5 harms caused by hazardous chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed
7 General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

8 18. 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 19. 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 20. Exposing individuals 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 21. 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 22. 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 23. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

5 24. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,
6 and consulted with a person with relevant and appropriate knowledge and expertise, who, after
7 reviewing the collected data and analyzing the risk of exposure to DEHP, determined the
8 PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a
9 warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in
10 accordance with their reasonably foreseeable and intended usages.

11 25. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
12 there was a reasonable and meritorious case for this private action and included the factual
13 information supporting the certificate when it served the notice on the California Attorney General’s
14 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

15 26. Thereafter, on November 15, 2024, plaintiff served a 60-Day Notice of Violation
16 (“**Notice**”), together with the certificate of merit, on PAC-DENT, the California Attorney General’s
17 Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales
18 of the PRODUCTS, consumers in the State of California were, and are, being exposed to DEHP
19 through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a
20 “clear and reasonable warning,” as required by Proposition 65.

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

24 **FIRST CAUSE OF ACTION**

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

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

28

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 Notice, 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 individuals 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 and
17 other individuals in California, are not exempt from the "clear and reasonable" warning requirements
18 of Proposition 65.

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

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

27 38. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
28 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have

1 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
2 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

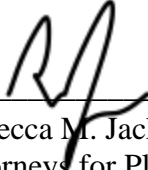
20 4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred
21 herein; and

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

23 Dated: January 21, 2025

Respectfully submitted,

24 SEVEN HILLS LLP

25
26 By:  _____

27 Rebecca M. Jackson
Attorneys for Plaintiff

28 *Keep America Safe and Beautiful*