

ENDORSED
FILED
ALAMEDA COUNTY

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13 LAURENCE VINO CUR,
14 Plaintiff,

15 v.

16 A.D. SUTTON AND SONS, INC.; and DOES
17 1-150, inclusive,
18 Defendants.

Case No. **RG14741719**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.6 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff LAURENCE
3 VINOCUR (“Plaintiff” or “Vinocur”) in the public interest of the citizens of the State of
4 California to enforce the People’s right to be informed of the presence of di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in backpacks with vinyl/PVC
6 components sold in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to DEHP present in and on the backpacks
9 with vinyl/PVC components manufactured, distributed, and offered for sale or use to consumers
10 throughout the State of California.

11 3. Detectable levels of DEHP are commonly found in and on the backpacks with
12 vinyl/PVC components that defendants manufacture, distribute, and offer for sale to consumers
13 throughout the State of California.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
15 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
16 doing business shall knowingly and intentionally expose any individual to a chemical known to
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual” Health & Safety Code § 25249.6.

19 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
21 subject to the “clear and reasonable warning” requirements of the act one year later on October
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
23 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale backpacks
25 with vinyl/PVC components containing DEHP as follows:
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1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
2 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
3 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
4 PRODUCTS.

5 23. The California Superior Court has jurisdiction over this action pursuant to
6 California Constitution Article VI, section 10, which grants the Superior Court “original
7 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
8 which this action is brought does not specify any other basis of subject matter jurisdiction.

9 24. The California Superior Court has jurisdiction over DEFENDANTS based on
10 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
11 association that is a citizen of the State of California, has sufficient minimum contacts in the
12 State of California, and/or otherwise purposefully avails itself of the California market.
13 DEFENDANTS’ purposeful availing renders the exercise of personal jurisdiction by California
14 courts consistent with traditional notions of fair play and substantial justice.

15 **FIRST CAUSE OF ACTION**

16 **(Violation of Proposition 65 - Against All Defendants)**

17 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
18 Paragraphs 1 through 24, inclusive.

19 26. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
20 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
21 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
22 harm.”

23 27. Proposition 65 states, “[n]o person in the course of doing business shall
24 knowingly and intentionally expose any individual to a chemical known to the state to cause
25 cancer or reproductive toxicity without first giving clear and reasonable warning to such
26 individual” Health & Safety Code § 25249.6.

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1 28. On July 11, 2014, plaintiff's sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to ADS&S and certain public enforcement agencies
3 stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the LISTED
4 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
5 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the
6 individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures, as required by Proposition 65.

8 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
9 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
10 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
11 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and
12 continuous in nature, and will continue to occur in the future.

13 30. After receiving plaintiff's sixty-day notice of violation, the appropriate public
14 enforcement agencies have failed to commence and diligently prosecute a cause of action
15 against DEFENDANTS under Proposition 65.

16 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
17 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
18 a "clear and reasonable" warning under Proposition 65.

19 32. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
21 CHEMICAL.

22 33. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
23 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
24 reasonably foreseeable use.

25 34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
26 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
27 defined by title 27 of the California Code of Regulations, section 25602(b).

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2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

4. That the Court grant such other and further relief as may be just and proper.

Dated: September 22, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 
Jonathan A. Bornstein
Attorneys for Plaintiff
LAURENCE VINOCUR