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ENDORSED
FILED
Superior Court of California
County of San Francisco

FEB 04 2015

CLERK OF THE COURT
BY: MARY A. MORAN
Deputy Clerk

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

CGC - 15 - 543958

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
CWC INVENTORIES, INC.; and DOES 1-
150, inclusive,
Defendants.

Case No. _____
**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 ANTHONY E.
3 HELD the public interest of the citizens of the State of California to enforce the People’s right
4 to be informed about exposures to lead and di(2-ethylhexyl)phthalate (“DEHP”), toxic
5 chemicals that are found in and on walking sticks with vinyl/PVC grips that are sold in
6 California.

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

11 3. Detectable levels of lead and DEHP are commonly found in and on the walking
12 sticks with vinyl/PVC grips that defendants import, manufacture, distribute, ship, sell and/or
13 offer for sale to consumers 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. On February 27, 1987, California listed lead pursuant to Proposition 65 as a
20 chemical that is known to cause birth defects or other reproductive harm. Lead became subject
21 to the “clear and reasonable warning” requirements of the act one year later on February 27,
22 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

23 6. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
24 chemical that is known to cause birth defects or other reproductive harm. DEHP became
25 subject to the “clear and reasonable warning” requirements of the act one year later on October
26 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
27 25249.10(b).

1 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

8 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
9 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
10 and 25249.11.

11 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
13 in the State of California.

14 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

17 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

19 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are
20 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
21 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
22 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
23 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

24 21. CWC, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
25 and RETAILER DEFENDANTS are hereinafter collectively referred to as “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

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

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

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

18 **FIRST CAUSE OF ACTION**

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

20 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 24, inclusive.

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

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

3 28. On June 20, 2014, plaintiff’s sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to CWC and certain public enforcement agencies
5 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
6 CHEMICALS, workers, consumers, and other individuals in the State of California were being
7 exposed to the LISTED CHEMICALS resulting from their reasonably foreseeable use of the
8 PRODUCTS, without the individual purchasers and users first having received a “clear and
9 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

18 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
19 or use in California by DEFENDANTS contain the LISTED CHEMICALS in such a way that
20 the reasonably foreseeable uses of these products result in exposures that require a “clear and
21 reasonable” warning under Proposition 65.

22 32. DEFENDANTS knew or should have known that the PRODUCTS they
23 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
24 CHEMICALS.

25 33. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
26 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
27 use.

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

4 35. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact
6 and/or ingestion.

7 36. DEFENDANTS intend for such exposures to the LISTED CHEMICALS from the
8 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
9 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
10 use to individuals in the State of California.

11 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 workers, consumers and other individuals in California not covered by California’s
13 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,
14 exposed to the LISTED CHEMICALS.

15 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
16 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
17 CHEMICALS through dermal contact and/or ingestion resulting from the reasonably
18 foreseeable uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable
19 warning,” have suffered, and continue to suffer, irreparable harm for which they have no plain,
20 speedy, or adequate remedy at law.

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

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

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

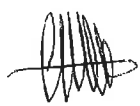
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by title 27 of the California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

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: February 3, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher Tuttle, Esq.
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.