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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 WHITNEY R. LEEMAN, PH.D.,

14 Plaintiff,

15 v.

16 OCCUNOMIX INTERNATIONAL LLC; and
DOES 1-150, inclusive,

17 Defendants.
18

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in safety vests with vinyl/PVC
6 components sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens and other individuals not covered by California’s Occupational Safety
9 Health Act, Labor Code section 6300 et seq. about the risks of exposure to DEHP present in and
10 on safety vests with vinyl/PVC components that are manufactured, distributed, and offered for
11 sale or use to consumers and other individuals throughout the State of California. Individuals
12 not covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq.
13 who purchase, use or handle defendants’ products are referred to hereinafter as “consumers”.

14 3. Detectable levels of DEHP are found in and on safety vests with vinyl/PVC
15 components that defendants manufacture, distribute, and offer for sale without a warning to
16 consumers throughout the State of California.

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

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

27 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
28 hazard warnings in California, safety vests with vinyl/PVC components, including, but not

1 limited to, the *OccuNomix International LLC High Visibility Safety Gear Vest, XGTM-OXL,*
2 *UPC #0 21844 55681 2.* All such safety vests with vinyl/PVC components containing DEHP
3 are referred to collectively hereinafter as “PRODUCTS.”

4 7. Defendants’ failure to warn consumers in the State of California of the health
5 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
8 § 25249.7(a) & (b)(1).

9 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
11 the required warning regarding the health hazards associated with exposures to DEHP. Health
12 & Safety Code § 25249.7(a).

13 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
14 penalties against defendants for their violations of Proposition 65.

15 **PARTIES**

16 10. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California
17 who is dedicated to protecting the health of California citizens through the elimination or
18 reduction of toxic exposures from consumer products; and she brings this action in the public
19 interest pursuant to Health and Safety Code section 25249.7(d).

20 11. Defendant Occunomix International LLC (“OCCUNOMIX”) is a person in the
21 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
22 25249.11.

23 12. OCCUNOMIX manufactures, imports, distributes, sells, and/or offers the
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

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

5 22. 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 23. 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 availment renders the exercise of personal jurisdiction by
14 California 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
18 Paragraphs 1 through 25, inclusive.

19 25. 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 26. 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.

27 27. On October 28, 2015, plaintiff served a sixty-day notice of violation, together
28 with the requisite certificate of merit, on OCCUNOMIX, and the requisite public enforcement

1 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
2 DEHP, consumers in the State of California were being exposed to DEHP resulting from their
3 reasonably foreseeable use of the PRODUCTS, without the consumers first having been
4 provided with a “clear and reasonable warning” regarding the harms associated with such
5 exposures, as required by Proposition 65.

6 28. DEFENDANTS have manufactured, imported, distributed, sold, and offered the
7 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
8 DEFENDANTS’ violations have continued beyond their receipt of plaintiff’s sixty-day notice
9 of violation. DEFENDANTS’ violations are ongoing and continuous in nature, and, as such,
10 will continue in the future.

11 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
12 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS
13 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
14 violation.

15 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
16 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
17 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
18 consumers in California are not exempt from the “clear and reasonable” warning requirements
19 of Proposition 65, yet DEFENDANTS provide no warning.

20 31. DEFENDANTS knew or should have known that the PRODUCTS they
21 manufactured, imported, distributed, sell, and offer for sale or use in California contain DEHP.

22 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
23 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

24 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
25 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
26 of Regulations, section 25602(b).

27 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
28 the PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

1 35. DEFENDANTS intended that exposures to DEHP from the reasonably
2 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation
3 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
4 use to consumers in California.

5 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
6 consumers in California who were or who would become exposed to DEHP through dermal
7 contact and/or ingestion resulting from their use of the PRODUCTS.

8 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
9 directly by California voters, consumers exposed to DEHP through dermal contact and/or
10 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear
11 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
12 for which they have no plain, speedy, or adequate remedy at law.

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

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

19 **PRAYER FOR RELIEF**

20 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
26 offering the PRODUCTS for sale or use in California without first providing a “clear and
27 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
28 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 et seq.;

4. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

Dated: May ____, 2016

Respectfully Submitted,
THE CHANLER GROUP

By: _____
Christopher Tuttle
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.