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FILED
Superior Court Of California,
Sacramento
08/23/2012
lgutierrez2
By _____, Deputy
Case Number:
34-2012-00130566

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SACRAMENTO

13 UNLIMITED CIVIL JURISDICTION

DEPARTMENT
ASSIGNMENTS

Case Management 36
Law and Motion 53
Minors Compromise 24

14 ANTHONY E. HELD, PH.D., P.E.;
15 RUSSELL BRIMER; and JOHN MOORE,

16 Plaintiffs,

17 v.

18 KAMALA D. HARRIS, in her official
19 capacity as the Attorney General of the State of
20 California; THE DEPARTMENT OF
21 JUSTICE OF THE STATE OF
22 CALIFORNIA; and DOES 1-20, inclusive,

23 Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, OR OTHER RELIEF**

(Cal. Gov't Code § 11350)

1 Plaintiffs Anthony E. Held, Ph.D., P.E., Russell Brimer, and John Moore allege:

2 **NATURE OF THE ACTION**

3 1. This Complaint is an action pursuant to California Government Code § 11350 for
4 declaratory and injunctive relief regarding the validity of Title 11 of the California Code of
5 Regulations, section 3003 (“11 CCR § 3003”), adopted by the Attorney General of the State of
6 California (“Attorney General”) and the Department of Justice of the State of California
7 (“Department of Justice”), and requiring citizen enforcers of Proposition 65 to file and serve
8 motions to approve settlements under Proposition 65 on the Attorney General no later than 45
9 days in advance of the hearing on such motions.

10 2. This action is brought by plaintiffs Anthony E. Held, Ph.D., P.E., Russell Brimer,
11 and John Moore to enforce their right as private litigants and citizen enforcers of California’s
12 Proposition 65, to file motions to approve proposed Proposition 65 settlements and file and
13 serve notice of such motions, in accordance with California Code of Civil Procedure (“CCP”) §
14 1005(b), 16 court days before the hearing, rather than at least 45 days prior to the date of the
15 hearing on such motions, as now required by 11 CCR § 3003. The Attorney General’s
16 regulation, 11 CCR § 3003, is in conflict with CCP § 1005(b) and also exceeds the statutory
17 authority relied upon by the Attorney General in support of 11 CCR § 3003.

18 3. Proposition 65 authorizes private citizens to bring actions in the public interest to
19 enforce Health & Safety Code § 25249.6, which provides in pertinent part, “No person in the
20 course of doing business shall knowingly and intentionally expose any individual to a chemical
21 known to the state to cause cancer or reproductive toxicity without first giving clear and
22 reasonable warning to such individual.” Proposition 65 imposes civil penalties on violators and
23 provides for injunctive relief. Settlements between private enforcers and alleged violators
24 almost universally require the alleged violator to pay civil penalties into the State’s coffers—in
25 private enforcement actions, 75% of civil penalties are paid to the State, and the remaining 25%
26 are paid to the private enforcer who brought the action—and often require the alleged violator to
27 reformulate its products to eliminate the presence of chemicals known to cause birth defects and
28

1 other reproductive harm. Under Health and Safety Code § 25249.7(f)(4), the private enforcer
2 must submit Proposition 65 settlements to the court for approval upon noticed motion.

3 **PARTIES**

4 4. Plaintiff Anthony E. Held, Ph.D., P.E. is a citizen of the State of California who is
5 dedicated to protecting the health of California citizens through the elimination or reduction of
6 toxic exposures from consumer and commercial products.

7 5. Plaintiff Russell Brimer is a citizen of the State of California who is dedicated to
8 protecting the health of California citizens through the elimination or reduction of toxic
9 exposures from consumer and commercial products.

10 6. Plaintiff John Moore is a citizen of the State of California who is dedicated to
11 protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer and commercial products.

13 7. Plaintiffs Anthony E Held, Ph.D., P.E., Russell Brimer, and John More are
14 hereinafter collectively referred to as the "plaintiffs."

15 8. Defendant Kamala D. Harris is the Attorney General of the State of California. In
16 her official capacity, the Attorney General is the chief legal officer of the State of California,
17 and the person responsible for adopting 11 CCR § 3003. It is her duty to see that the laws of the
18 State are uniformly and adequately enforced. The Attorney General maintains offices in
19 Sacramento, California. The Attorney General is the head of the Department of Justice. (Cal.
20 Gov't Code § 12510.) Any duties which the Attorney General may perform personally may
21 ordinarily be performed by his or her regularly authorized assistants and deputies.

22 9. Defendant Department of Justice is, and at all times herein mentioned was, a
23 department within the executive branch of the State of California, duly organized under the laws
24 of the State of California, and is under the direction and control of the Attorney General. (Cal.
25 Gov't Code § 15000.) Assistant attorneys general, deputy attorneys general, service agents,
26 experts, and technical and clerical employee appointed by the Attorney General are civil
27 executive officers within the Department of Justice.
28

1 Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code sections
2 25249.5 or 25249.6) (hereinafter 'Proposition 65'), shall comply with the applicable
3 requirements of this chapter."

4 Section 3003: "The Private Enforcer shall serve the Settlement on the Attorney General
5 with a Report of Settlement in the form set forth in Appendix B within five days after
6 the action is Subject to a Settlement, or concurrently with service of the motion for
7 judicial approval of settlement pursuant to Health and Safety Code section
8 25249.7(f)(4), whichever is sooner. The motion and all supporting papers and exhibits
9 shall be served on the Attorney General no later than forty-five days prior to the date of
10 the hearing of the motion." (Emphasis added.)

11 15. The Attorney General's regulation, 11 CCR § 3003, has since its adoption been,
12 and now is, in full force and effect. The Attorney General's note to Section 3003 cites for its
13 authority to Health and Safety Code § 25249.7(f), which provides:

- 14 (1) Any person filing an action in the public interest pursuant to subdivision
15 (d), any private person filing any action in which a violation of this chapter
16 is alleged, or any private person settling any violation of this chapter
17 alleged in a notice given pursuant to paragraph (1) of subdivision (d), shall,
18 after the action or violation is subject either to a settlement or to a
19 judgment, submit to the Attorney General a reporting form that includes the
20 results of that settlement or judgment and the final disposition of the case,
21 even if dismissed. At the time of the filing of any judgment pursuant to an
22 action brought in the public interest pursuant to subdivision (d), or any
23 action brought by a private person in which a violation of this chapter is
24 alleged, the plaintiff shall file an affidavit verifying that the report required
25 by this subdivision has been accurately completed and submitted to the
26 Attorney General.
- 27 (2) Any person bringing an action in the public interest pursuant to subdivision
28 (d), or any private person bringing an action in which a violation of this
chapter is alleged, shall, after the action is either subject to a settlement,
with or without court approval, or to a judgment, submit to the Attorney
General a report that includes information on any corrective action being
taken as a part of the settlement or resolution of the action.
- (3) The Attorney General shall develop a reporting form that specifies the
information that shall be reported, including, but not limited to, for
purposes of subdivision (e), the date the action was filed, the nature of the
relief sought, and for purposes of this subdivision, the amount of the
settlement or civil penalty assessed, other financial terms of the settlement,
and any other information the Attorney General deems appropriate.

1 (4) If there is a settlement of an action brought by a person in the public
2 interest under subdivision (d), the plaintiff shall submit the settlement,
3 other than a voluntary dismissal in which no consideration is received from
4 the defendant, to the court for approval upon noticed motion, and the court
5 may approve the settlement only if the court makes all of the following
6 findings:

7 (A) Any warning that is required by the settlement complies with this
8 chapter.

9 (B) Any award of attorney's fees is reasonable under California law.

10 (C) Any penalty amount is reasonable based on the criteria set forth in
11 paragraph (2) of subdivision (b).

12 (5) The plaintiff subject to paragraph (4) has the burden of producing evidence
13 sufficient to sustain each required finding. The plaintiff shall serve the
14 motion and all supporting papers on the Attorney General, who may appear
15 and participate in any proceeding without intervening in the case.

16 (6) Neither this subdivision nor the procedures provided in subdivision (e) and
17 subdivisions (g) to (j), inclusive, shall affect the requirements imposed by
18 statute or a court decision in existence on January 1, 2002, concerning
19 whether claims raised by any person or public prosecutor not a party to the
20 action are precluded by a settlement approved by the court.

21 16. Health and Safety Code § 25249.7(f) contains no language authorizing the
22 Attorney General to adopt regulations altering the time for notice of a motion to approve a
23 Proposition 65 settlement. The provisions of section 25249.7(f) that govern the Attorney
24 General's authority and the procedures for a private enforcer to obtain court approval of a
25 Proposition 65 settlement are subparts (3), (4), and (5), which confer no authority on the
26 Attorney General other than to develop a reporting form for settlement.

27 17. 11 CCR § 3003 is in conflict with CCP § 1005(b), which provides in pertinent
28 part: "Unless otherwise ordered or specifically provided by law, all moving and supporting
papers shall be served and filed at least 16 court days before the hearing. . . . The court, or a
judge thereof, may prescribe a shorter time."

18 18. Whereas CCP § 1005(b) allows a plaintiff to file and serve a motion to approve a
19 Proposition 65 settlement 16 court days before the date set for hearing on the motion, 11 CCR
20 § 3003 requires that the plaintiff serve the Attorney General with the moving and supporting
21 papers no less than 45 days before the date set for hearing on the motion. Section 25249.7(f)

1 contains no authority for the Attorney General to require a private enforcer of Proposition 65 to
2 provide a longer period of notice for a motion than required by CCP § 1005(b). Because 11
3 CCR § 3003 alters or amends CCP § 1005(b) for private enforcers of Proposition 65, it is clearly
4 void.

5 19. 11 CCR § 3003 denies plaintiffs' statutory right under CCP § 1005(b) to file and
6 serve a motion to approve a Proposition 65 settlement less than 45 days before the date set for
7 the hearing on the motion. 11 CCR § 3003 is detrimental not only to plaintiffs but also to the
8 citizens of California because it illegally delays plaintiffs' ability to obtain court approval of
9 settlements that result in payments of civil penalties to the State, reformulation of products to
10 eliminate the presence of chemicals known to cause cancer or reproductive harm, or otherwise
11 require alleged violators of Proposition 65 to bring their products into compliance with the health
12 hazard warning law.

13 FIRST CAUSE OF ACTION

14 **(Declaratory Relief – Against All Defendants)**

15 20. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
16 Paragraphs 1 through 19, inclusive.

17 21. An actual and judicially cognizable controversy has arisen and now exists
18 between plaintiffs and defendants regarding whether 11 CCR § 3003 is invalid and
19 unenforceable, both on its face and as construed by defendants, in that 11 CCR § 3003, a
20 regulation adopted by the Attorney General, conflicts with CCP § 1005(b), a statute duly
21 adopted by the California Legislature. The Attorney General is presently enforcing 11 CCR
22 § 3003 to the detriment of plaintiffs, other private enforcers of Proposition 65, and the public
23 interest.

24 22. Plaintiffs desire a declaration of their rights with respect to the application or
25 nonapplication of 11 CCR § 3003 to plaintiffs, with particular reference as to the legality of
26 plaintiffs' ability to file and serve a motion to approve a Proposition 65 settlement less than 45
27 days before the date of the hearing on the motion.
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