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ENDORSED
FILED
San Francisco County Superior Court

JUL 19 2007

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DEPARTMENT 212
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

11
12 CENTER FOR ENVIRONMENTAL HEALTH,)

13 Plaintiff,

14 v.

15
16 ALAN JAMES GROUP, LLC; and Defendant
17 DOES 1 through 200, inclusive,

18 Defendants.)

Case No. 07C07-465287

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code §25249.6 et seq.;

(Other)

BY FAX

1 Plaintiff Center for Environmental Health (“Plaintiff”), in the public interest, and
2 based on information and belief and investigation of counsel, except for information based on
3 personal knowledge, hereby makes the following allegations:

4 INTRODUCTION

5 1. This complaint seeks to remedy Defendants’ continuing failure to warn
6 individuals in California that they are being exposed to Di-n-Butyl Phthalate (“DBP”), a
7 chemical known to the State of California to cause birth defects or other reproductive harm.
8 Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale
9 and consumer use of Defendants’ dietary and herbal supplement capsules containing DBP (the
10 “Products”). Consumers are exposed to DBP when they use or otherwise handle the Products.

11 2. Under California’s Proposition 65, Health and Safety Code §25249.5 *et*
12 *seq.*,¹ it is unlawful for businesses to knowingly and intentionally expose individuals in
13 California to chemicals known to the State to cause birth defects or other reproductive harm
14 without providing clear and reasonable warnings to individuals prior to their exposure. Despite
15 the fact that Defendants’ Products expose consumers to DBP, Defendants provide no warnings
16 whatsoever about the reproductive hazards associated with DBP exposure. Defendants’ conduct
17 thus violates the warning provision of Proposition 65. Health & Safety Code §25249.6.

18 PARTIES

19 3. Plaintiff Center for Environmental Health (“CEH”) is a non-profit
20 corporation dedicated to protecting the public from environmental health hazards and toxic
21 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
22 California. CEH is a “person” within the meaning of Health & Safety Code §25249.11(a) and
23 brings this enforcement action in the public interest pursuant to Health & Safety Code
24 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
25 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
26 resulted in significant public benefit, including reformulation of toxic products to make them
27 safer and the provision of clear and reasonable warnings on hundreds of products sold throughout

28 ¹ All statutory references herein are to California statutes, unless otherwise noted.

1 California.

2 4. Defendant Alan James Group, LLC (“Alan James”) is a “person in the
3 course of doing business” within the meaning of Health & Safety Code §25249.11(b). Alan
4 James manufactures, distributes and/or sells the Products for sale and use in California.

5 5. DOES 1 through 200 are each a person in the course of doing business
6 within the meaning of Health & Safety Code §25249.11. Defendant DOES 1 through 200 each
7 manufacture, distribute and/or sell the Products for sale or use in California.

8 6. DOES 1 through 200 are each identified herein by fictitious names. The
9 true names of DOES 1 through 200 are unknown to Plaintiff at this time. When the identities of
10 DOES 1 through 200 are ascertained, the complaint shall be amended to reflect their true names.

11 7. Alan James and DOES 1 through 200 are collectively referred to herein as
12 “Defendants.”

13 **JURISDICTION AND VENUE**

14 8. The Court has jurisdiction over this action pursuant to Health & Safety
15 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
16 California Superior Court has jurisdiction over this action pursuant to California Constitution
17 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except
18 those given by statute to other trial courts.” The statutes under which this action is brought do
19 not grant jurisdiction to any other trial court.

20 9. This Court has jurisdiction over the Defendants because each is a business
21 entity that does sufficient business, has sufficient minimum contacts or otherwise intentionally
22 avails itself of the California market through the sale, marketing or use of the Products in
23 California and/or by having such other contacts with California so as to render the exercise of
24 jurisdiction over it by the California courts consistent with traditional notions of fair play and
25 substantial justice.

26 10. Venue is proper in the San Francisco Superior Court because one or more
27 of the violations arise in the County of San Francisco.

28

1 **BACKGROUND FACTS**

2 11. The People of the State of California have declared by initiative under
3 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
4 defects, or other reproductive harm.” Proposition 65, §1(b).

5 12. To effectuate this goal, Proposition 65 requires that individuals be
6 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
7 State of California as known to cause birth defects or other reproductive harm unless the business
8 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety
9 Code §25249.6 states, in pertinent part:

10 No person in the course of doing business shall knowingly and
11 intentionally expose any individual to a chemical known to the
12 state to cause cancer or reproductive toxicity without first giving
clear and reasonable warning to such individual. . . .

13 13. On December 2, 2005, the State of California officially listed DBP as a
14 chemical known to cause reproductive toxicity. DBP is specifically identified as a reproductive
15 toxicant under three subcategories: “developmental reproductive toxicity,” which means that it
16 tends to harm the developing fetus, “female reproductive toxicity,” which means that it tends to
17 harm the female reproductive system, and “male reproductive toxicity,” which means that it
18 tends to harm the male reproductive system. 22 California Code of Regulations (“CCR”)
19 §12000(c). On December 2, 2006, one year after it was listed as a chemical known to cause
20 reproductive toxicity, DBP became subject to the clear and reasonable warning requirement
21 regarding reproductive toxins under Proposition 65. 22 CCR §12000(c); Health & Safety Code
22 §25249.10(b).

23 14. Defendants’ Products contain sufficient quantities of DBP such that
24 individuals who handle the Products are exposed to DBP through the average use of the
25 Products. Ordinary consumers are exposed to DBP through direct ingestion when consumers
26 swallow the Products as directed by the Products’ packaging. Additional exposure can occur via
27 hand to mouth contact after consumers touch or handle the Products, and dermal absorption
28 directly through the skin when consumers touch or handle the Products.

1 15. Defendants both know and intend that the Products contain DBP. The
2 Products typically use DBP to regulate dissolution of the capsule when ingested.

3 16. Defendants both know and intend that individuals will handle, ingest, and
4 otherwise use the Products, thus exposing them to DBP.

5 17. Nevertheless, Defendants have, since December 2, 2006, and continuing to
6 the present, exposed consumers to DBP without providing clear and reasonable warnings
7 regarding the reproductive hazards of DBP.

8 18. Any person acting in the public interest has standing to enforce violations
9 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
10 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
11 action within such time. Health & Safety Code §25249.7(d).

12 19. More than sixty days before naming each Defendant in this suit, Plaintiff
13 provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney General, the
14 District Attorneys of every county in California, the City Attorneys of every California city with
15 a population greater than 750,000 and to Alan James. Each of the Notices contained the
16 information required by Health & Safety Code §25249.7(d) and 22 CCR §12903(b).

17 20. Plaintiff also sent a Certificate of Merit for each Notice of Violation to the
18 California Attorney General, the District Attorneys of every county in California, the City
19 Attorneys of every California city with a population greater than 750,000, and to Alan James. In
20 compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each Certificate of
21 Merit certified that Plaintiff's counsel: (1) has consulted with one or more persons with relevant
22 and appropriate experience or expertise who reviewed facts, studies or other data regarding the
23 exposures to DBP alleged in the Notice; and (2) based on the information obtained through such
24 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement
25 action based on the facts alleged in the attached Notice. In compliance with Health & Safety
26 Code §25249.7(d) and 11 CCR §3102, the Certificate served on the Attorney General included
27 factual information – provided on a confidential basis – sufficient to establish the basis for the
28 Certificates, including the identity of the person(s) consulted by Plaintiff's counsel and the facts,

1 studies or other data reviewed by such persons.

2 21. None of the public prosecutors with the authority to prosecute violations
3 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the
4 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claim asserted in the
5 Notice.

6 22. Plaintiff has engaged in good-faith efforts to resolve the claims alleged
7 herein prior to filing this complaint.

8 23. Any person “violating or threatening to violate” Proposition 65 may be
9 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
10 violate” is defined to mean “to create a condition in which there is a substantial probability that a
11 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
12 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

13 **FIRST CAUSE OF ACTION**
14 **(Violations of the Health & Safety Code §25249.6)**
15 **(Against All Defendants)**

16 24. Plaintiff realleges and incorporates by reference as if specifically set forth
17 herein Paragraphs 1 through 23, inclusive.

18 25. By placing the Products into the stream of commerce, Defendants are
19 persons in the course of doing business within the meaning of Health & Safety Code §25249.11.

20 26. Defendants know that average use of the Products will expose users of the
21 Products to DBP. Defendants intend that the Products be used in a manner that results in users of
22 the Products being exposed to DBP contained in the Products.

23 27. Defendants have failed, and continue to fail, to provide clear and
24 reasonable warnings regarding the reproductive toxicity of the DBP contained in their Products.

25 28. DBP is a chemical listed by the State of California as known to cause birth
26 defects and/or other reproductive harm.

27 29. By committing the acts alleged above, the Defendants have at all times
28 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
individuals to DBP without first giving clear and reasonable warnings to such individuals

1 regarding the reproductive toxicity of DBP.

2 Wherefore, Plaintiff prays judgment against the Defendants, as set forth hereafter.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff prays for judgment against Defendants as follows:

5 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
6 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
7 Proposition 65 according to proof;

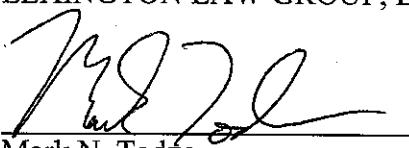
8 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
9 preliminarily and permanently enjoin Defendants from offering the Products for sale in
10 California without providing clear and reasonable warnings, as Plaintiff shall specify in further
11 application to the Court;

12 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
13 Defendants to take action to stop ongoing unwarned exposures to DBP resulting from use of
14 Products sold by Defendants, as Plaintiff shall specify in further application to the Court;

15 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other
16 applicable theory, grant Plaintiff his reasonable attorneys' fees and costs of suit; and

17 5. That the Court utilize its inherent equitable power to grant such other and
18 further relief as may be just and proper.

19 Dated: July 18, 2007

Respectfully submitted,
LEXINGTON LAW GROUP, LLP

Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH

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