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LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
Eric S. Somers, State Bar No. 139050
Howard Hirsch, State Bar No. 213209
Ryan D. Cabinte, State Bar No. 230792
1627 Irving Street
San Francisco, CA 94122
Telephone: (415) 759-4111
Facsimile: (415) 759-4112

CASE MANAGEMENT CONFERENCE SET

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 MAR 19 AM 12:58

GORDON PARK - LL CLERK

BY: ~~LEWIS BENT~~

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

AUG 22 2008 - 9⁰⁰AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,)

Case No. 08C-28-473477

Plaintiff,)

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

v.)

Health & Safety Code §25249.6 et seq.;

ANSELL HEALTHCARE PRODUCTS INC.;)
ANSELL HEALTHCARE PRODUCTS LLC;)
MAGLA PRODUCTS, LLC; PLAYTEX)
PRODUCTS, INC.; and Defendant DOES 1)
through 200, inclusive,)

(Other)

Defendants.)

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(2-ethylhexyl) phthalate ("DEHP"), a
7 chemical known to the State of California to cause cancer and birth defects or other reproductive
8 harm. Such exposures have occurred, and continue to occur, through the manufacture,
9 distribution, sale and consumer use of Defendants' vinyl gloves containing DEHP (the
10 "Products"). Consumers are exposed to DEHP 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 cancer and/or birth defects or other
14 reproductive harm without providing clear and reasonable warnings to individuals prior to their
15 exposure. Despite the fact that Defendants' Products expose consumers to DEHP, Defendants
16 provide no warnings whatsoever about the reproductive hazards associated with DEHP exposure.
17 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety
18 Code §25249.6.

19 PARTIES

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

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

1 safer and the provision of clear and reasonable warnings on hundreds of products sold throughout
2 California.

3 4. Defendant Ansell Healthcare Products Inc. ("AHPI") is a "person in the
4 course of doing business" within the meaning of Health & Safety Code §25249.11(b). AHPI
5 manufactures, distributes and/or sells the Products for sale and use in California.

6 5. Defendant Ansell Healthcare Products LLC ("AHPL") is a "person in the
7 course of doing business" within the meaning of Health & Safety Code §25249.11(b). AHPL
8 manufactures, distributes and/or sells the Products for sale and use in California.

9 6. Defendant Magla Products, LLC ("Magla") is a "person in the course of
10 doing business" within the meaning of Health & Safety Code §25249.11(b). Magla
11 manufactures, distributes and/or sells the Products for sale and use in California.

12 7. Defendant Playtex Products, Inc. ("Playtex") is a "person in the course of
13 doing business" within the meaning of Health & Safety Code §25249.11(b). Playtex
14 manufactures, distributes and/or sells the Products for sale and use in California.

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

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

21 10. AHPI, AHPL, Magla, Playtex and DOES 1 through 200 are collectively
22 referred to herein as "Defendants."

23 **JURISDICTION AND VENUE**

24 11. The Court has jurisdiction over this action pursuant to Health & Safety
25 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
26 California Superior Court has jurisdiction over this action pursuant to California Constitution
27 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except
28 those given by statute to other trial courts." The statutes under which this action is brought do

1 not grant jurisdiction to any other trial court.

2 12. This Court has jurisdiction over the Defendants because each is a business
3 entity that does sufficient business, has sufficient minimum contacts or otherwise intentionally
4 avails itself of the California market through the sale, marketing or use of the Products in
5 California and/or by having such other contacts with California so as to render the exercise of
6 jurisdiction over it by the California courts consistent with traditional notions of fair play and
7 substantial justice.

8 13. Venue is proper in the San Francisco Superior Court because one or more
9 of the violations arise in the County of San Francisco.

10 **BACKGROUND FACTS**

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

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

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

22 16. On January 1, 1988, the State of California officially listed DEHP as a
23 chemical known to cause cancer. On January 1, 1989, one year after it was listed as a chemical
24 known to cause cancer, DEHP became subject to the clear and reasonable warning requirement
25 regarding cancer hazards under Proposition 65. 22 CCR §12000(c); Health & Safety Code
26 §25249.10(b).

27 17. On October 24, 2003, the State of California officially listed DEHP as a
28 chemical known to cause reproductive toxicity. DEHP is specifically identified as a reproductive

1 toxicant under two subcategories: (1) “developmental reproductive toxicity,” which means that it
2 tends to harm the developing fetus and (2) “male reproductive toxicity,” which means that it
3 tends to harm the male reproductive system. 22 California Code of Regulations (“CCR”)
4 §12000(c). On October 24, 2004, one year after it was listed as a chemical known to cause
5 reproductive toxicity, DEHP became subject to the clear and reasonable warning requirement
6 regarding reproductive toxins under Proposition 65. 22 CCR §12000(c); Health & Safety Code
7 §25249.10(b).

8 18. Defendants’ Products contain sufficient quantities of DEHP such that
9 individuals who handle the Products are exposed to DEHP through the average use of the
10 Products. For example, ordinary consumers absorb DEHP through the skin when they touch,
11 use, handle, put on, wear and/or take off the Products. Ordinary consumers also ingest DEHP
12 when they put the Products in their mouths during normal use, including when consumers put on,
13 wear and/or take off the Products. Ordinary consumers ingest DEHP via hand to mouth contact
14 after they touch, use, handle, put on, wear and/or take off the Products or touch other objects that
15 they then put in their mouths.

16 19. Defendants both know and intend that the Products contain DEHP. The
17 Products typically use DEHP to provide the Products with flexibility.

18 20. Defendants both know and intend that individuals will handle, wear, and
19 otherwise use the Products, thus exposing them to DEHP. DEHP is an intended ingredient that
20 makes up a substantial percentage of the Products.

21 21. Nevertheless, Defendants have, since March 3, 2005, and continuing to the
22 present, exposed consumers to DEHP without providing clear and reasonable warnings regarding
23 the cancer and/or reproductive hazards of DEHP.

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

28 23. More than sixty days before naming each Defendant in this Complaint,

1 Plaintiff provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney
2 General, the District Attorneys of every county in California, the City Attorneys of every
3 California city with a population greater than 750,000 and to the Defendant named. Each of the
4 Notices contained the information required by Health & Safety Code §25249.7(d) and 22 CCR
5 §12903(b).

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

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

24 26. Plaintiff has engaged in good-faith efforts to resolve the claims alleged
25 herein prior to filing this complaint.

26 27. Any person “violating or threatening to violate” Proposition 65 may be
27 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
28 violate” is defined to mean “to create a condition in which there is a substantial probability that a

1 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
2 penalties up to \$2,500 per day for each violation of Proposition 65.

3 **FIRST CAUSE OF ACTION**
4 **(Violations of the Health & Safety Code §25249.6)**
5 **(Against All Defendants)**

6 28. Plaintiff realleges and incorporates by reference as if specifically set forth
7 herein Paragraphs 1 through 27, inclusive.

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

10 30. Defendants know that average use of the Products will expose users of the
11 Products to DEHP. Defendants intend that the Products be used in a manner that results in users
12 of the Products being exposed to DEHP contained in the Products.

13 31. Defendants have failed, and continue to fail, to provide clear and
14 reasonable warnings regarding the carcinogenicity and/or reproductive toxicity of the DEHP
15 contained in their Products.

16 32. DEHP is a chemical listed by the State of California as known to cause
17 cancer and birth defects and other reproductive harm.

18 33. By committing the acts alleged above, the Defendants have at all times
19 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
20 individuals to DEHP without first giving clear and reasonable warnings to such individuals
21 regarding the carcinogenicity and/or reproductive toxicity of DEHP.

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

23 **PRAYER FOR RELIEF**

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

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

28 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
preliminarily and permanently enjoin Defendants from offering the Products for sale in

1 California without providing clear and reasonable warnings, as Plaintiff shall specify in further
2 application to the Court;

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

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

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

10 Dated: March 19, 2008

Respectfully submitted,

11 LEXINGTON LAW GROUP, LLP

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13 Mark N. Todzo
14 Attorneys for Plaintiff
15 CENTER FOR ENVIRONMENTAL HEALTH
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