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SUPERIOR COURT
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STEPHEN D. GILLETT

CASE MANAGEMENT CONFERENCE SET

DEC 26 2008 - 9:00 AM

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

GGC-08-477910

11 STEPHEN D. GILLETT,) Case No. _____
12 Plaintiff,)
13 v.) **COMPLAINT FOR INJUNCTIVE**
14 RON TEEGUARDEN ENTERPRISES, INC.,) **RELIEF AND CIVIL PENALTIES**
15 Defendant.) Health & Safety Code §25249.5, *et seq.*;

18 Plaintiff Stephen D. Gillett brings this action in the interests of the general public and,
19 on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendant's continuing failure to warn thousands
22 of consumers in California that they are being exposed to lead, a substance known to the State
23 of California to cause cancer, birth defects and other reproductive harm. Defendant
24 manufactures, packages, distributes, markets, and/or sells in California herbal products
25 containing lead (collectively referred to hereinafter as the "PRODUCTS").
26

1 2. Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are
2 substances known to the State¹ of California to cause cancer, birth defects and other
3 reproductive harm.

4 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
5 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code") §
7 25249.5, *et seq.* (also known as "Proposition 65"). Defendant has failed to provide the health
8 hazard warnings required by Proposition 65.

9 4. Defendant's continued manufacturing, packaging, distributing, marketing and/or
10 sales of the PRODUCTS without the required health hazard warnings, causes individuals to be
11 involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS that violate
12 Proposition 65.

13 5. By this action Plaintiff seeks appropriate relief:

- 14 a. prohibiting the continued manufacturing, packaging, distributing,
15 marketing and/or sales of the PRODUCTS in California by Defendant
16 without provision of clear and reasonable warnings regarding the risks of
17 cancer, birth defects and other reproductive harm posed by exposure to
18 the LISTED CHEMICALS through the use and/or handling of the
19 PRODUCTS; and,
20 b. assessing civil penalties in the amount of \$2,500 per day per violation to
21 remedy Defendant's ongoing failure to provide clear and reasonable
22 warnings to thousands of individuals that they are being exposed and
23 continue to be exposed to LISTED CHEMICALS through the use and/or
24 handling of the PRODUCTS;

25
26

¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 **JURISDICTION AND VENUE**

2 6. This Court has jurisdiction over this action pursuant to California Constitution
3 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes
4 except those given by statute to other trial courts." The statute under which this action is
5 brought does not specify any other basis for jurisdiction.

6 7. This Court has jurisdiction over Defendant because, based on information and
7 belief, Defendant is a corporation organized under the laws of the State of California, or doing
8 sufficient business in, and having sufficient minimum contacts with, California, or otherwise
9 intentionally availing itself of the California market through the distribution and sale of the
10 PRODUCTS in the State of California to render the exercise of jurisdiction over it by the
11 California courts consistent with traditional notions of fair play and substantial justice.

12 8. Venue in this action is proper in the San Francisco Superior Court because the
13 Defendant has violated California law in the City and County of San Francisco.

14 **PARTIES**

15 9. Plaintiff STEPHEN D. GILLETT ("SDG") is a citizen enforcer dedicated to the
16 protection of the environment, the promotion of human health and the improvement of worker
17 and consumer safety. SDG resides in San Francisco, California.

18 10. SDG is bringing this enforcement action in the public interest pursuant to H&S
19 Code § 25249.7(d).

20 11. Defendant RON TEEGUARDEN ENTERPRISES, INC. ("RTE" or
21 "Defendant") is person doing business within the meaning of H&S Code § 25249.11.

22 12. RTE manufactures, packages, distributes, markets and/or sells one or more of
23 the PRODUCTS for sale or use in California.

24 **STATUTORY BACKGROUND**

25 **A. Proposition 65**

26 13. The People of the State of California have declared in Proposition 65 their right
"[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other

1 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

2 14. To effect this goal, Proposition 65 requires that individuals be provided with a
3 "clear and reasonable warning" before being exposed to substances listed by the State of
4 California as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent
5 part:

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

10 15. Proposition 65 provides that any person "violating or threatening to violate" the
11 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7.) The phrase
12 "threatening to violate" is defined to mean creating "a condition in which there is a substantial
13 likelihood that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
14 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code § 25249.7.)

14 FACTUAL BACKGROUND

15 16. On February 27, 1987, the State of California officially listed the chemical lead
16 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
17 requirement one year later and was therefore subject to the "clear and reasonable" warning
18 requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
19 Regulations ("CCR") §25000, *et seq.*; H&S Code § 25249.5, *et seq.*)

20 17. On October 1, 1992, the State of California officially listed the chemicals lead
21 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
22 subject to the warning requirement one year later and were therefore subject to the "clear and
23 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR §
24 25000, *et seq.*; H&S Code § 25249.6, *et seq.*)

25 18. Plaintiff is informed and believes, and based on such information and belief
26 alleges, that one or more of the PRODUCTS have been distributed and/or sold to individuals in
California without clear and reasonable warning since at least May 9, 2007. The PRODUCTS

1 continue to be distributed and sold in California without the requisite warning information.

2 19. As a proximate result of acts by Defendant, as a person in the course of doing
3 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
4 State of California, including in the County of San Francisco, have been exposed to the
5 LISTED CHEMICALS without clear and reasonable warning. The individuals subject to the
6 violative exposures include normal and foreseeable users of the PRODUCTS, as well as all
7 other persons exposed to the PRODUCTS.

8 20. At all times relevant to this action, Defendant has knowingly and intentionally
9 exposed the users and/or handlers of the PRODUCTS to the LISTED CHEMICALS without
10 first giving a clear and reasonable warning to such individuals.

11 21. Individuals using or handling the PRODUCTS are exposed to the LISTED
12 CHEMICALS in excess of the levels determined by the State of California to cause "no
13 observable effect" or "no significant risk", as applicable, within the meaning of H&S Code §
14 25249.10(c).

15 22. At all times relevant to this action, Defendant has, in the course of doing
16 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and
17 reasonable warning that the PRODUCTS expose individuals to the LISTED CHEMICALS.

18 23. The PRODUCTS continue to be distributed and sold in California without the
19 requisite clear and reasonable warning.

20 **FIRST CAUSE OF ACTION**
21 **(Violations of Health and Safety Code § 25249.6, *et seq.*)**

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

24 25. Beginning on May 9, 2008, Plaintiff sent a 60-Day Notice of Proposition 65
25 violations to the requisite public enforcement agencies and to Defendant. The notice was issued
26 pursuant to, and in compliance with, the requirements of H&S Code § 25249.7(d) and the
statute's implementing regulations regarding the notice of the violations to be given to certain

1 public enforcement agencies and to the violator. The notice given included, *inter alia*, the
2 following information: the name, address, and telephone number of the noticing individual; the
3 name of the alleged violator; the statute violated; the approximate time period during which
4 violations occurred; and descriptions of the violations, including the chemicals involved, the
5 routes of toxic exposure, and the specific products or type of products causing the violations,
6 and was issued as follows:

- 7 a. Defendant and the California Attorney General were provided copies of
8 the 60-Day Notice by Certified Mail.
- 9 b. Defendant was provided a copy of a document entitled "The Safe
10 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
11 Summary," which is also known as Appendix A to Title 27 of CCR §
12 25903.
- 13 c. The California Attorney General was provided with a Certificate of Merit
14 by the attorney for the noticing party, stating that there is a reasonable
15 and meritorious case for this action, and attaching factual information
16 sufficient to establish a basis for the certificate, including the identify of
17 the persons consulted with and relied on by the certifier, and the facts
18 studies, or other data reviewed by those persons, pursuant to H&S Code §
19 25249.7(h)(2).

20 26. The appropriate public enforcement agencies have failed to commence and
21 diligently prosecute a cause of action under H&S Code § 25249.5, *et seq.* against Defendant
22 based on the allegations herein.

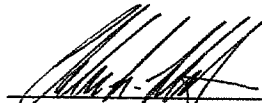
23 27. By committing the acts alleged in this Complaint, Defendant at all times relevant
24 to this action, and continuing through the present, has violated H&S Code § 25249.6 by, in the
25 course of doing business, knowingly and intentionally exposing individuals who use or handle
26 the PRODUCTS to the LISTED CHEMICALS, without first providing a clear and reasonable
warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

1 California Code of Civil Procedure §1021.5, as Plaintiff shall specify in further application to
2 the Court; and,

3 D. such other and further relief as may be just and proper.

4
5 DATED: July 25, 2008

LAW OFFICES OF ANDREW L. PACKARD

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8 Andrew L. Packard
9 Attorneys for Plaintiff
10 STEPHEN D. GILLETT
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