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Case Management 44
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO
UNLIMITED CIVIL JURISDICTION

ANTHONY HELD, Ph.D., P.E.,
Plaintiff,
v.
ROMAR INTERNATIONAL
CORPORATION; and DOES 1-150, inclusive,
Defendants.

Case No. 34-2908-00027780

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, Ph.D., P.E., in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate, a toxic chemical
5 found in baby and children’s products sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to di(2-ethylhexyl) phthalate present in or on
8 certain baby and children’s products that defendants manufacture, distribute and/or offer for sale
9 to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl) phthalate are commonly found in and on baby and
11 children’s products that defendants manufacture, distribute and/or offer for sale to consumers
12 throughout the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 et seq. (Proposition 65), “No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as
19 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the “clear
21 and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004. (27
22 *CCR § 27001; Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the “LISTED
24 CHEMICAL.”

25 7. Defendants manufacture, distribute, and/or sell bibs containing excessive levels of
26 the LISTED CHEMICAL including, but not limited to, the *Mothers Care El Babero Del Bebe*,
27 (#0 15394 00408 4). All such bibs containing the LISTED CHEMICAL shall hereinafter be
28 referred to as the “PRODUCTS.”

1 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
2 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
3 the State of California.

4 18. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing
5 business within the meaning of California Health & Safety Code § 25249.11.

6 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
7 State of California.

8 20. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
9 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
10 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
11 each of the fictitiously named defendants is responsible for the acts and occurrences herein
12 alleged. When ascertained, their true names shall be reflected in an amended complaint.

13 21. ROMAR, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
15 to hereinafter as “DEFENDANTS.”

16 VENUE AND JURISDICTION

17 22. Venue is proper in the Sacramento County Superior Court, pursuant to Code of
18 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
19 because one or more instances of wrongful conduct occurred, and continues to occur, in the
20 County of Sacramento and/or because DEFENDANTS conducted, and continue to conduct,
21 business in this County with respect to the PRODUCTS.

22 23. The California Superior Court has jurisdiction over this action pursuant to
23 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
24 all causes except those given by statute to other trial courts.” The statute under which this action
25 is brought does not specify any other basis of subject matter jurisdiction.

26 24. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65 – Against All Defendants)**

6 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

8 26. The citizens of the State of California have expressly stated in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
10 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
11 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

12 27. Proposition 65 states, “No person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual....”
15 (*Id.*)

16 28. On May 23, 2008, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to ROMAR and various public enforcement agencies stating
18 that as a result of this DEFENDANTS' sales of the PRODUCTS, purchasers and users in the
19 State of California were being exposed to the LISTED CHEMICAL resulting from the
20 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
21 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

22 29. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
23 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
24 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
25 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
26 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
27 believes that such violations will continue to occur into the future.

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1 30. After receipt of the claims asserted in the sixty-day notices of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against DEFENDANTS under Proposition 65.

4 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
6 limits.

7 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
9 LISTED CHEMICAL.

10 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
11 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
12 during the reasonably foreseeable use of the PRODUCTS.

13 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
15 by 27 CCR § 25602(b).

16 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

19 36. DEFENDANTS, and each of them, intended that such exposures to the LISTED
20 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
21 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or
22 use of PRODUCTS to individuals in the State of California.

23 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and/or other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

27 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
2 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

4 39. As a consequence of the above-described acts, DEFENDANTS, and each of them,
5 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
6 Health & Safety Code § 25249.7(b).

7 40. As a consequence of the above-described acts, California Health & Safety Code
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 41. Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of
11 them, as set forth hereinafter.

12 **PRAYER FOR RELIEF**

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

14 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
15 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
16 each violation alleged herein;

17 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
18 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
19 distributing or offering the PRODUCTS for sale or use in California, without providing “clear
20 and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with
21 exposures to the LISTED CHEMICAL;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,
HIRST & CHANLER LLP

Dated: November 26, 2008

By: Laurence D. Haveson
Laurence D. Haveson
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.