

APR 17 2009

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PH.D., P.E.,

13 Plaintiff,

14 v.

15 COSRICH GROUP, INC.; PMC GLOBAL,
16 INC.; CWC INVENTORIES, INC.; and DOES
17 I through 150, inclusive,

18 Defendants.

Case No. SC102684

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

BY FAX

INITIAL CASE MANAGEMENT REVIEW
AND CONFERENCE

AUG 05 2009

TERRY B. FRIEDMAN

Dept. J

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amr

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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) found
5 in children's soft vinyl zipper pulls manufactured and sold by defendants in California.

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

10 3. High levels of DEHP are commonly found in and on children's soft vinyl zipper
11 pulls that defendants manufacture, distribute and/or offer for sale to consumers throughout the
12 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 the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual. . . ." (*Cal. Health & Safety Code* §25249.6.)

18 5. On October 24, 2003, California identified and listed DEHP as a chemical known to
19 cause birth defects and other reproductive harm. DEHP became subject to the warning
20 requirement one year later and was therefore subject to the "clear and reasonable warning"
21 requirements of Proposition 65, beginning on October 24, 2004. (*CCR §12000(c); Cal. Health &*
22 *Safety Code* §25249.8.) DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

23 6. Defendants manufacture and sell children's soft vinyl zipper pulls containing DEHP
24 including, but not limited to, *DreamWorks Over the Hedge Lip Balm with Character Zipper Pull*,
25 *SKU #1544908 (#7 83010 00757 2)*, which contain excessive levels of the LISTED CHEMICAL.
26 All such children's soft vinyl zipper pulls containing the LISTED CHEMICAL shall hereinafter be
27 referred to as the "PRODUCTS."
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1 16. CWC manufactures, distributes, and/or offers the PRODUCTS for sale or use in the
2 State of California or implies by its conduct that it manufactures, distributes, and/or offers the
3 PRODUCTS for sale or use in the State of California.

4 17. Defendants DOES 1-50 (MANUFACTURER DEFENDANTS) are each persons
5 doing business within the meaning of California Health & Safety Code §25249.11.

6 18. MANUFACTURER DEFENDANTS engage in the process of research, testing,
7 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
8 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
9 one or more of the PRODUCTS for sale or use in the State of California.

10 19. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each persons
11 doing business within the meaning of California Health & Safety Code §25249.11.

12 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
13 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
14 the State of California.

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

17 22. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
18 of California.

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

24 24. COSRICH GROUP, PMC, CWC, MANUFACTURER DEFENDANTS,
25 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,
26 collectively be referred to hereinafter as "DEFENDANTS."

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1 **VENUE AND JURISDICTION**

2 25. Venue is proper in the Los Angeles County Superior Court, pursuant to Code of
3 Civil Procedure §§394, 395, 395.5, because this Court is a court of competent jurisdiction, because
4 one or more instances of wrongful conduct occurred, and continues to occur, in the County of Los
5 Angeles and/or because DEFENDANTS conducted, and continue to conduct, business in this
6 County with respect to the PRODUCTS.

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

11 27. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
13 association that either is a citizen of the State of California, has sufficient minimum contacts in the
14 State of California, or otherwise purposefully avails itself of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**
18 **(Violation of Proposition 65)**

19 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 27, inclusive.

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

25 30. Proposition 65 states, “No person in the course of doing business shall knowingly
26 and intentionally expose any individual to a chemical known to the state to cause cancer or
27 reproductive toxicity without first giving clear and reasonable warning to such individual...” (*Id.*)
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1 31. On November 28, 2008, a sixty-day notice of violation, together with the requisite
2 certificate of merit, was provided to PMC, CWC, and various public enforcement agencies stating
3 that as a result of DEFENDANTS' sale of PRODUCTS, purchasers and users in the State of
4 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
5 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
6 provided with a "clear and reasonable warning" regarding such toxic exposures.

7 32. On January 27, 2009, a sixty-day notice of violation, together with the requisite
8 certificate of merit, was provided to COSRICH GROUP and various public enforcement agencies
9 stating that as a result of DEFENDANTS' sale of PRODUCTS, purchasers and users in the State
10 of California were being exposed to the LISTED CHEMICAL resulting from the reasonably
11 foreseeable uses of PRODUCTS, without the individual purchasers and users first having been
12 provided with a "clear and reasonable warning" regarding such toxic exposures.

13 33. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
14 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
15 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
16 violation of California Health & Safety Code §25249.6 has continued to occur beyond
17 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
18 believes that such violations will continue to occur into the future.

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

22 35. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
23 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
24 limits.

25 36. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
26 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
27 CHEMICAL.
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1 37. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
2 expose individuals to the LISTED CHEMICAL through ingestion and/or dermal contact during the
3 reasonably foreseeable use of the PRODUCTS.

4 38. The normal and reasonably foreseeable use of the PRODUCTS has caused and
5 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
6 by 22 CCR §12601(b).

7 39. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion and/or
9 dermal contact.

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

14 41. DEFENDANTS failed to provide a "clear and reasonable warning" to those
15 consumers and/or other individuals in the State of California who were or who could become
16 exposed to the LISTED CHEMICAL through ingestion and/or dermal contact during the
17 reasonably foreseeable use of the PRODUCTS.

18 42. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
19 directly by California voters, individuals exposed to the LISTED CHEMICAL through ingestion
20 and/or dermal contact resulting from the reasonably foreseeable use of the PRODUCTS, sold by
21 DEFENDANTS without "clear and reasonable warning," have suffered, and continue to suffer,
22 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

26 44. As a consequence of the above-described acts, California Health & Safety Code
27 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
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1 DEFENDANTS.

2 45. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
3 set forth hereinafter.

4 **PRAYER FOR RELIEF**

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

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

9 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
10 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
11 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and
12 reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to
13 the LISTED CHEMICAL;

14 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

15 4. That the Court grant such other and further relief as may be just and proper.

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17 Dated: April 17, 2009

Respectfully Submitted,

HIRST & CHANLER LLP



Christopher M. Martin
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.