

UNRECORDED
FILED
ALAMEDA COUNTY

AUG 22 2000

CLERK OF THE SUPERIOR COURT
By
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 **RG 13692785**

15 ANTHONY E. HELD, Ph.D., P.E.,

Case No. _____

16 Plaintiff,

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

17 v.

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

18 FRANCO MANUFACTURING CO., INC.; and
19 DOES 1-150, inclusive,

20 Defendants.

BY FAX

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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 ("DEHP"), a toxic
5 chemical found in pillows with vinyl components and vinyl placemats sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' failure to warn
7 California citizens about reproductive toxicity associated with their exposure to DEHP present
8 in or on certain pillows with vinyl components and vinyl placemats that defendants
9 manufacture, import, distribute, and/or offer for sale to consumers throughout the State of
10 California.

11 3. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the
13 course of doing business shall knowingly and intentionally expose any individual to a chemical
14 known to the State to cause cancer or reproductive toxicity without first giving clear and
15 reasonable warning to such individual ..." (Cal. Health & Safety Code, § 25249.6.)

16 4. On October 24, 2003, California identified and listed DEHP as a chemical known
17 to cause birth defects and other reproductive harm. DEHP became subject to the "clear and
18 reasonable warning" requirements of Proposition 65 one year later on October 24, 2004. (Tit.
19 27 Cal. Code Regs. ("CCR") § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
20 25249.10(b).)

21 5. Defendants manufacture, import, distribute, and/or offer for sale pillows with
22 vinyl components and vinyl placemats containing excessive levels of DEHP including, but not
23 limited to, the *Nick Jr. Go, Diego, Go! Decorative Pillow* (#0 73558 49690 8) and *Placemat,*
24 *Superman, #162VAA* (#0 73558 59369 0), *Placemat, The Dark Knight, #'59VPP* (#0 73558
25 *59369 0}*, *Placemat, Go Diego Go! Animal Rescue #102UPP* (#0 73558 55034 1). All such
26 pillows with vinyl components and vinyl placemats containing DEHP shall hereinafter be
27 referred to as the "PRODUCTS."

28 6. Defendants' failure to warn consumers and/or other individuals in the State of

1 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
2 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive
3 harm in conjunction with defendants' distribution, importation, manufacturing, and/or sale of
4 the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
5 conduct as well as civil penalties for each such violation.

6 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
7 and permanent injunctive relief to compel defendants to provide purchasers or users of the
8 PRODUCTS with the required warning regarding the health hazards of DEHP. (Cal. Health &
9 Safety Code § 25249.7(a).)

10 8. Plaintiff also seeks civil penalties against defendants for their violations of
11 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

12 PARTIES

13 9. Plaintiff, ANTHONY E. HELD is a citizen of the State of California who is
14 dedicated to protecting the health of California citizens through the elimination or reduction of
15 toxic exposures from consumer products; he brings this action in the public interest pursuant to
16 California Health & Safety Code § 25249.7(d).

17 10. Defendant FRANCO MANUFACTURING CO., INC. ("FRANCO
18 MANUFACTURING"), is a person in the course of doing business within the meaning of
19 California Health & Safety Code § 25249.11.

20 11. Defendant FRANCO MANUFACTURING manufactures, imports, distributes,
21 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct
22 that it manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the
23 State of California.

24 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
25 persons in the course of doing business within the meaning of California Health & Safety Code
26 § 25249.11.

27 13. MANUFACTURER DEFENDANTS engage in the process of researching,
28 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that

1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

3 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
4 in the course of doing business within the meaning of California Health & Safety Code §
5 25249.11.

6 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
8 in the State of California.

9 16. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in
10 the course of doing business within the meaning of California Health & Safety Code §
11 25249.11.

12 17. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 19. FRANCO MANUFACTURING, MANUFACTURER DEFENDANTS,
20 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
21 collectively be referred to as "DEFENDANTS."

22 **VENUE AND JURISDICTION**

23 20. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
24 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
25 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
26 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
27 County with respect to the PRODUCTS.

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1 component PRODUCTS, without the individual purchasers and users first having been provided
2 with a “clear and reasonable warning” regarding such toxic exposures.

3 27. On or about September 15, 2009, a supplemental sixty-day notice of violation,
4 together with the requisite certificate of merit, was provided to FRANCO MANUFACTURING
5 and various public enforcement agencies stating that, as a result of the DEFENDANTS’ sales of
6 the vinyl placemat PRODUCTS, purchasers and users in the State of California were being
7 exposed to DEHP resulting from the reasonably foreseeable use of the vinyl placemat
8 PRODUCTS, without the individual purchasers and users first having been provided with a
9 “clear and reasonable warning” regarding such toxic exposures.

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

16 29. After receipt of the claims asserted in the sixty-day notice of violation, the
17 appropriate public enforcement agencies have failed to commence and diligently prosecute a
18 cause of action against DEFENDANTS under Proposition 65.

19 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
20 use in California by DEFENDANTS contained DEHP in an amount above the allowable State
21 limits.

22 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
23 imported, distributed, and/or offered for sale or use in California contained DEHP.

24 32. DEHP was present in or on the PRODUCTS in such a way as to expose
25 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
26 use of the PRODUCTS.

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1 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, consumer and workplace exposures to DEHP, as such exposure is defined
3 by Title 27 CCR § 25602(b).

4 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
5 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

6 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
7 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
8 in the manufacture, import, distribution, and/or offering of the PRODUCTS for sale or use to
9 individuals in the State of California.

10 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
11 consumers and/or other individuals in the State of California who were, or who could become
12 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
13 use of the PRODUCTS.

14 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
15 directly by California voters, individuals exposed to DEHP through dermal contact and/or
16 ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
17 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
18 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

19 38. As a consequence of the above-described acts, DEFENDANTS are liable for a
20 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
21 Safety Code § 25249.7(b).

22 39. As a consequence of the above-described acts, California Health & Safety Code
23 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
24 DEFENDANTS.

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1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
8 distributing, and/or offering the PRODUCTS for sale or use in California, without providing
9 "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with
10 exposure to DEHP;

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

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

13 Dated: August 23, 2013

14 Respectfully Submitted,
15 THE CHANLER GROUP

16 By: 

17 Christopher M. Martin
18 Attorneys for Plaintiff
19 ANTHONY E. HELD
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