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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO	
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11	UNLIMITED C	TVIL JURISDICTION
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13	EVELYN WIMBERLEY,	CASE NO.: 37-2010-00084587-CU-MC-CTL
14	Plaintiff,) COMPLAINT FOR CIVIL PENALTIES
15	and) AND INJUNCTIVE RELIEF
16) (Cal. Health & Safety Code § 25249.6 et seq.)
17	ONTEL PRODUCTS, INC.; CVS/Pharmacy; CVS Caremark	
18	Corporation; and DOES	
19	1-150, inclusive)
20	Defendants.	
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22	NATURE OF THE ACTION	
23	1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,	
24	in the public interest of the citizens of the State of California, to enforce the people's right to be	
25	informed of the presence of lead, a toxic chemical found in Battery Operated LED Lights sold in	
26	California.	
27	2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to	
28	warn California citizens about their exposure to lead present in or on certain Battery Operated	

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

LED Lights that defendants manufacture, distribute and/or offer for sale to consumers throughout the State of California.

3. High levels of lead are commonly found in Battery Operated LED Lights that defendants manufacture, distribute and/or offer for sale to consumers throughout the State of California.

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

5. On October 3, 2009, California identified and listed Lead as a chemical known to cause birth defects and other reproductive harm. Lead became subject to the warning requirements of Proposition 65 for developmental toxicity beginning on February 27, 1987 and for cancer toxicity on October 1, 1992. (27 CCR § 27002; Cal. Health & Safety Code § 25249.6.)

6. Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

7. Defendants manufacture, distribute and/or sell Battery Operated LED Lights containing excessive levels of the LISTED CHEMICAL including, but not limited to, the Stick "N" Click (#6 77448004007 5). All such Battery Operated LED Lights containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

8. Defendants' failures to warn consumers and/or other individuals in the State of California about their exposure to the LISTED CHEMICAL in conjunction with defendant's sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinment of such conduct as well as civil penalties for each such violation.

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

PARTIES

11. Plaintiff Evelyn Wimberley is a citizen of the City of Playa del Ray, County of Los Angeles, in the State of California, who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

12. Defendant ONTEL PRODUCTS, INC ("ONTEL") is a person doing business within the meaning of California Health & Safety Code § 25249.11.

13. Defendant ONTEL manufactures, distributes, and/or offers the PRODUCTS for sales or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

14. Defendant DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code § 25249.11.

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

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

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

18. Defendants CVS/Pharmacy; CVS Caremark Corporation and DOES 101-150 (RETAIL DEFENDANTS) are each persons doing business within the meaning of California Health & Safety Code § 25249.11.

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

21. ONTEL, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS."

VENUE AND JURISDICTION

22. Venue is proper in the San Diego County Superior Court, pursuant to Code of Civil Procedure § § 394, 495, 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the County of San Diego and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

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

24. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 – Against All Defendants)

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

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

28. On October 3, 2009 a sixty-day notice violation, together with the requisite certificate of merit, was provided to ONTEL, CVS/Pharmacy, CVS Caremark Inc., and various public enforcement agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable users of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

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

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

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

> COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF 5

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

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

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

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

36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, nonaccidental participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to individuals in the State of California.

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

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

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

41. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth hereinafter.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as detailed by 27 CCR § 25601, as to the harms associated with exposures to the LISTED CHEMICAL;

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

Respectfully Submitted,

Dated: January 29, 2010

Law Offices of Stephen Ure, PC.

By:

Stephen Ure, Esq. Attorney for Plaintiff EVELYN WEMBERLEY