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FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION

2010 JUN 23 PM 12:45

SUPERIOR COURT
SAN DIEGO COUNTY, CA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**

13 **MAUREEN PARKER,**)
14)
15 **Plaintiff,**)
16)
17 **and**)
18)
19 **NATIONAL EXPRESS, INC.**)
20)
21 **Defendant.**)

CASE NO.: 37-2010-00094856-CU-NP-CTL

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

22 **NATURE OF THE ACTION**

23 1. This Complaint is a representative action brought by plaintiff Maureen Parker, in
24 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 National Express Water Jets 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 National Express
Water Jets that defendants manufacture, distribute and/or offer for sale to consumers throughout
the State of California.

1 11. Plaintiff Maureen Parker is a citizen of the City of Oceanside, County of San
2 Diego, in the State of California, who is dedicated to protecting the health of California citizens
3 through the elimination o reduction of toxic exposures from consumer products, and brings this
4 action in the public interest pursuant to California Health & Safety Code § 25249.7.

5 12. Defendant NATIONAL EXPRESS, INC (“NATIONAL EXPRESS”) is a person
6 doing business within the meaning of California Health & Safety Code § 25249.11.

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

10 14. NATIONAL EXPRESS, INC shall, where appropriate, be referred to hereinafter
11 as “DEFENDANT.”

12 **VENUE AND JURISDICTION**

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

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

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

28 **FIRST CAUSE OF ACTION**

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(Violation of Proposition 65 – Against Defendant)

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

19. 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. (Proposition 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.*)

20. 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.*)”

21. On April 15, 2010 a sixty-day notice violation, together with the requisite certificate of merit, was provided to NATIONAL EXPRESS, 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.

22. DEFENDANT 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.

23. 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 DEFENDANT under Proposition 65.

1 24. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANT contained the LISTED CHEMICAL above the allowable state
3 limits.

4 25. DEFENDANT knew or should have known that the PRODUCTS manufactured,
5 distributed, and/or for sale or use by DEFENDANT in California contained the LISTED
6 CHEMICAL.

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

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

13 28. DEFENDANT had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
15 and/or ingestion.

16 29. DEFENDANT intended that such exposures to the LISTED CHEMICAL from
17 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
18 accidental participation in the manufacture, distribution and/or offer for sale or use of
19 PRODUCTS to individuals in the State of California.

20 30. DEFENDANT failed to provide a “clear and reasonable warning” to those
21 consumers and/or other individuals in the State of California who were or who could become
22 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
23 reasonably foreseeable use of the PRODUCTS.

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

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

4 33. As a consequence of the above-described acts, California Health & Safety Code §
5 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

6 34. Wherefore, plaintiff prays for judgment against DEFENDANT as set forth
7 hereinafter.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

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

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

18 3. That the Court grant plaintiff his reasonable attorneys’ fees and cost of suit; and

19 4. That the Court grant such other and further relief as may be just and proper.
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22 Dated: June 23, 2010

Respectfully Submitted,

Law Offices of Stephen Ure, PC.

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24 By: 

Stephen Ure, Esq.
Attorney for Plaintiff
MAUREEN PARKER
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