

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2011 MAR -3 AM 1:07

CLERK OF COURT
BY: ~~_____~~

1 Michael Freund SBN 99687
2 Law Office of Michael Freund
3 1915 Addison Street
4 Berkeley, CA 94704
5 Telephone: (510) 540-1992
6 Facsimile: (510) 540-5543

7 Attorney for Plaintiff David Steinman

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 **DAVID STEINMAN**

Case No. **CGC-11-508757**

12 **Plaintiff,**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

13
14 **v.**

15 **THE PROCTER AND GAMBLE**
16 **DISTRIBUTING LLC AND DOES**
17 **1-100**

[Miscellaneous Civil Complaint (42)]
Proposition 65, Health & Safety Code
Section 25249.5 et seq.]

18 **Defendants.**

19
20
21 Plaintiff David Steinman hereby alleges:

22 **I**

23
24 **INTRODUCTION**

25
26 1. Plaintiff David Steinman (hereinafter "plaintiff" or "David Steinman")) brings this
27 action as a private attorney general and in the public interest pursuant to Health & Safety Code
28 section 25249.7 (d). This complaint seeks injunctive relief and civil penalties to remedy The Procter

1 and Gamble Distributing LLC's ("Procter & Gamble") failure to warn users of one of the
2 company's products that they have been exposed to a chemical known to the State of California to
3 cause cancer. Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health &
4 Safety Code section 25249.5 et seq) also known as "Proposition 65," businesses with ten or more
5 employees must provide a "clear and reasonable warning" prior to exposing persons to these
6 chemicals.
7

8 II

9 PARTIES

10
11 2. Plaintiff David Steinman is a committed environmentalist, journalist, consumer health
12 advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007);
13 The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden:
14 Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this legal
15 action, Mr. Steinman seeks to eliminate exposure to 1,4-dioxane.
16

17 3. Defendant Procter & Gamble is a business entity that employs ten or more persons in the
18 course of doing business for the purpose of Proposition 65. Procter & Gamble manufactures,
19 distributes and/or sells Pantene Pro V Nature Fusion Shampoo ("Covered Product") to consumers
20 within the State of California.
21

22 4. Defendants Does I-100, are named herein under fictitious names, as their true names and
23 capacities are unknown to Plaintiff. David Steinman is informed and believes, and thereon alleges,
24 that each of said Does is responsible, in some actionable manner, for the events and happenings
25 hereinafter referred to, either through said defendant's conduct, or through the conduct of its agents,
26 servants or employees, or in some other manner, causing the harms alleged by plaintiff in this
27
28

1 complaint. When said true names and capacities of Does are ascertained, David Steinman will seek
2 leave to amend this complaint to set forth the same.

3 4 **III**

5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10
7 because this case is a cause not given by statute to other trial courts.

8 6. David Steinman has performed any and all conditions precedent to the filing of a legal
9 action pursuant to Proposition 65 by serving by mail a Notice of Violation, dated August 31, 2010
10 to the Attorney General of the State of California, the State's district attorneys, the appropriate
11 city attorney's and to Procter & Gamble. A true and correct copy of these Notices is attached
12 herein as Exhibit A. More than 60 days have passed since these Notices were mailed and no
13 public enforcement entity has filed a complaint in this case.

14 7. This Court is the proper venue for the action because the causes of action have arisen in
15 San Francisco where some of the violations of law have occurred. Furthermore, this Court is the
16 proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section
17 25249.7.

18 19 **IV**

20 **STATUTORY BACKGROUND**

21 **A. Proposition 65**

22 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
23 passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.

24 9. The warning requirement of Proposition 65 is contained in Health & Safety Code section
25 25249.6, which provides:
26
27
28

1 No person in the course of doing business shall knowingly and intentionally expose any
2 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
3 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

4 10. Implementing regulations for Proposition 65 provide that warnings are required for
5 consumer product exposures. A “consumer product exposure is an exposure which results from a
6 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
7 consumer good, or any exposure that results from receiving a consumer service.” 27 CCR section
8 25601 (b).

9 11. Whenever a clear and reasonable warning is required under Health & Safety Code section
10 25249.6, the “method employed to transmit the warning must be reasonably calculated considering
11 the alternative methods available under the circumstances, to make the warning message available
12 prior to exposure.” 27 CCR section 25601 (a). The warning requirement may be satisfied by a
13 warning that appears on a product’s label or other labeling, shelf labeling, signs, a system of signs,
14 public advertising identifying the system and toll-free information services, or any other, system,
15 that provides clear and reasonable warnings. Id., section 25601 (b) (1) (A)-(C).

16 12. Proposition 65 establishes a procedure by which the State is to develop a list of
17 chemicals “known to the State to cause cancer or reproductive toxicity.” Health & Safety Code
18 section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after
19 the chemical was published on the State list. Id., section 25249.10(b). 1,4 dioxane was listed as a
20 chemical known to the State of California to cause cancer on January 1, 1988. Title 27, Cal. Code
21 Regs., section 27001.

22 13. Proposition 65 may be enforced by any person in the public interest who provides notice
23 sixty days before filing suit to both the violator and designated law enforcement officials. The
24 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
25
26
27
28

1 pursuant to Health & Safety Code section 25249.7 (c).

2 14. Proposition 65 provides that any person “violating or threatening to violate” Proposition
3 65 may be enjoined in any court of competent jurisdiction. Health & Safety Code section 25249.7
4 (a). To “threaten to violate” means “to create a condition in which there is a substantial probability
5 that a violation will occur.” Id., section 25249.11 (e). Furthermore, violators are subject to a civil
6 penalty of up to \$2,500 per day for each violation. Id., section 25249.7 (b).

7
8 **V**

9
10 **STATEMENT OF FACTS**

11 15. Defendant Procter & Gamble manufactures, distributes and/sells the Covered Product.
12 The Covered Product contains 1,4-dioxane.

13 16. Procter & Gamble has knowingly and intentionally exposed numerous persons to 1,4-
14 dioxane, without providing a Proposition 65 warning. The company has at all times relevant hereto
15 been aware that the Covered Product contain 1,4-dioxane and that persons using the Covered
16 Product are exposed to the chemical. Procter & Gamble markets the Covered Product with
17 knowledge that exposures to 1,4-dioxane occur.

18 17. Procter & Gamble has failed to provide consumers of the Covered Product with a clear
19 and reasonable warning that they were exposed to a chemical known to the State of California to
20 cause cancer.

21
22
23 **FIRST CAUSE OF ACTION**

24 **(Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear**
25 **and Reasonable Warning under Proposition 65)**

26 18. David Steinman refers to paragraphs 1-17, inclusive, and incorporates them herein by this
27 reference.

1 19. By committing the acts alleged above, Procter & Gamble has, in the course of doing
2 business, knowingly and intentionally exposed individuals to a chemical known to the State of
3 California to cause cancer without first giving clear and reasonable warning to such individuals,
4 within the meaning of Health & Safety Code section 25249.6.
5

6 20. Said violations render each defendant liable for civil penalties up to \$2,500 (two
7 thousand, five hundred dollars) per day, for each violation.

8 21. Procter & Gamble's continued violation of the law will irreparably harm David
9 Steinman and the public interest in whose behalf Plaintiff brings this action, for which there is no
10 adequate remedy at law.
11

12 VI

13 PRAYER

14 WHEREFORE plaintiff prays for relief as follows:

15 1. On the First Cause of Action, for civil penalties for each and every violation according to
16 proof;
17

18 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7 (a), for
19 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,
20 prohibiting Procter & Gamble from exposing persons to 1,4-dioxane without providing clear and
21 reasonable warnings;
22

23 3. For reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the
24 substantial benefit theory;

25 4. For costs of suit herein; and
26
27
28

1 5. For such other relief as the Court may deem just and proper.

2 Dated: February 28, 2011

3
4 By



5 _____
6 Michael Freund
7 Attorney for David Steinman
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

August 31, 2010

Re: Notice of Violation Against The Procter and Gamble Distributing LLC for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include *Diet for a Poisoned Planet* (1990, 2007); *The Safe Shopper's Bible* (1995); *Living Healthy in a Toxic World* (1996); and *Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown* (2007). Through this Notice of Violation, Mr. Steinman seeks to reduce exposure to 1,4 -dioxane.

This letter constitutes notification that The Procter and Gamble Distributing LLC has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to 1,4-dioxane. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on January 1, 1988. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through dermal contact with the products. Additional exposures may occur through oral and inhalation exposure.

Procter and Gamble Distributing LLC is exposing people to 1,4-dioxane from the following product: Pantene Pro V Nature Fusion Shampoo.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Procter and Gamble Distributing LLC is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to 1,4-dioxane. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to this chemical without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

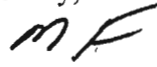
Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation that may reveal further violations. A summary of

EXHIBIT A

Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,

A handwritten signature in black ink, consisting of the letters 'M' and 'F' in a stylized, cursive font.

Michael Freund

cc: David Steinman

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Amended Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violation alleges that the party identified has exposed persons in California to 1,4-dioxane from the specified consumer product. Please refer to the Notice of Violation for additional details regarding the alleged violations.


3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the primary chemist who conducted the laboratory testing for 1,4-dioxane of this product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to 1,4-dioxane through dermal contact. There may be additional exposures through inhalation and oral exposure.

4. Based on my consultation with an experienced scientist in this field, the results of laboratory testing, as well as the published studies on 1,4-dioxane, it is clear that there is sufficient evidence that human exposures exist from exposure to the product from the noticed party. Furthermore, as

a result of the above, I have concluded that there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: August 31, 2010



Michael Freund
Attorney for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On August 31, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on August 31, 2010 at Berkeley, California.



Michael Freund

District Attorney of Alameda County
225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney of Glenn County
PO Box 430
Willows, CA 95988

District Attorney of Marin County
3501 Civic Center Dr., Room 130
San Rafael, CA 94903

District Attorney of Colusa County
47 Market Street
Colusa, CA 95932

District Attorney of Kings County
1400 West Lacey
Hanford, CA 93239

District Attorney of Mono County
PO Box 617
Bridgeport, CA 93517

District Attorney of Contra Costa
County
27 Ferry Street
Martinez, CA 94553

District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney of Mariposa County
PO Box 730
Mariposa, CA 95338

District Attorney of Alpine County
PO Box 248
Markleeville, CA 96120

District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney of Monterey County
230 Church Street, Bdg. 2
Salinas, CA 93901

District Attorney of Del Norte County
50 H Street, Ste 171
Resident City, CA 95531

District Attorney of Imperial County
939 Main Street
El Centro, CA 92243

District Attorney of Mendocino County
PO Box 1000
Ukiah, CA 95482

District Attorney of Amador County
108 Court Street, # 202
Jackson, CA 95642

District Attorney of Lassen County
220 S. Lassen St., Ste 8
Susanville, CA 96130

District Attorney of Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney of Butte County
15 County Center Drive
Yreaville, CA 95965

District Attorney of Inyo County
PO Drawer D
Independence, CA 93526

District Attorney of Merced County
2222 "M" Street
Merced, CA 95340

District Attorney of El Dorado County
115 Main Street
Placerville, CA 95667

District Attorney of Los Angeles County
210 W. Temple Street, Room 345
Los Angeles, CA 90012

District Attorney of Nevada County
110 Union Street
Nevada City, CA 95959-2503

District Attorney of Calaveras County
191 Mountain Ranch Road
San Andreas, CA 95249

District Attorney of Madera County
209 West Yosemite Ave.
Madera, CA 93637

District Attorney of Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney of Fresno County
1220 Tulare Street, # 1000
Fresno, CA 93721

District Attorney of Kern County
1215 Truxtun Ave.
Bakersfield, CA 93301

District Attorney of Modoc County
204 S. Court Street
Alturas, CA 96101-4020

District Attorney of Placer County
2501 North Lake Blvd.
Tahoe City, CA 96145

District Attorney of San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of San Bernardino Cty
316 N. Mountain View Ave.
San Bernardino, CA 92415

District Attorney of Sierra County
Courthouse, PO Box 457
Donieville, CA 95936

District Attorney of Ventura County
800 South Victoria Ave.
Ventura, CA 93009

District Attorney of Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney of Santa Barbara
County
1105 Santa Barbara Street
Santa Barbara, 93101

District Attorney of Tehama County
PO Box 519
Red Bluff, CA 96080

District Attorney of San Diego County
330 West Broadway, Suite 1320
San Diego, 92101

District Attorney of Siskiyou County
PO Box 986
Yreka, CA 96097

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Riverside County
4075 Main Street
Riverside, CA 92501

District Attorney of Solano County
675 Texas Street, Suite 4500
Fairfield, CA 94533

District Attorney of Trinity County
PO Box 310
11 Court Street
Weaverville, CA 96093

District Attorney of San Francisco
County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney of Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

District Attorney of Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney of Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney of Tulare County
221 S. Mooney Ave., Room 224
Visalia, CA 93291

District Attorney of San Joaquin County
PO Box 990
Stockton, CA 95201

District Attorney of Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney of Tuolumne County
423 No. Washington Street
Sonora, CA 95370

District attorney of San Luis Obispo
County
1050 Monterey St., Room 450
San Luis Obispo, CA 93408

District Attorney of Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

District Attorney of San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney of Stanislaus County
800 11th Street, Room 200
PO Box 442
Modesto, CA 95353

Los Angeles City Attorney's Office
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Ave. # 1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

California Attorney General's Office
Attn: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
PO Box 70550
Oakland, CA 94612

Alan Lafley, CEO
The Procter and Gamble
Distributing LLC
1 Procter & Gamble Plaza
Cincinnati, OH 45202