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ENDORSED
FILED
ALAMEDA COUNTY

MAR 15 2013

CLERK OF THE SUPERIOR COURT
By Donnan Pharr
Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 LAURENCE VINO CUR,

15 Plaintiff,

16 v.

17 BERGAN, LLC; and DOES 1-150, inclusive,

18 Defendants.

Case No. **HG13671471**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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2 1. This Complaint is a representative action brought by plaintiff LAURENCE
3 VINOCUR in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in pet carriers with vinyl/PVC handles sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on the pet carriers
8 with vinyl/PVC handles manufactured, distributed, and offered for sale or use to consumers
9 throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on the pet carriers with
11 vinyl/PVC handles that defendants manufacture, distribute, and offer for sale to consumers
12 throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale pet carriers
24 with vinyl/PVC handles containing the LISTED CHEMICAL without a warning, including, but
25 not limited to, the *Bergan Elite Pet Carrier, #70511 (#8 79213 00511 5)*. All such pet carriers
26 with vinyl/PVC handles containing the LISTED CHEMICAL are referred to collectively
27 hereinafter as “PRODUCTS.”

1 7. Defendants' failure to warn consumers and other individuals in the State of
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
3 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
4 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
5 & (b)(1).

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

10 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
11 penalties against defendants for their violations of Proposition 65.

12 **PARTIES**

13 10. Plaintiff LAURENCE VINOCUR 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; and he brings this action in the public interest
16 pursuant to Health and Safety Code section 25249.7(d).

17 11. Defendant BERGAN, LLC ("BERGAN") is a person in the course of doing
18 business within the meaning of Health and Safety Code section 25249.11.

19 12. BERGAN manufactures, imports, distributes, sells, and/or offers the PRODUCTS
20 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
21 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

22 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
23 persons in the course of doing business within the meaning of Health and Safety Code section
24 25249.11.

25 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
26 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
9 the course of doing business within the meaning of Health and Safety Code section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

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

17 20. BERGAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
22 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
23 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
24 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
25 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
26 PRODUCTS.

1 without the individual purchasers and users first having been provided with a “clear and
2 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
6 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
7 continuous in nature, and will continue to occur in the future.

8 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
9 enforcement agencies have failed to commence and diligently prosecute a cause of action
10 against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
12 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
13 a “clear and reasonable” warning under Proposition 65.

14 31. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
16 CHEMICAL.

17 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
18 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
19 reasonably foreseeable use.

20 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
21 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
22 defined by title 27 of the California Code of Regulations, section 25602(b).

23 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
24 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
25 and/or ingestion.

26 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, importation, distribution, sale, and offering of the
2 PRODUCTS for sale or use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in the State of California who were or who would become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable uses of the PRODUCTS.

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

12 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
13 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
14 for each violation.

15 39. As a consequence of the above-described acts, Health and Safety Code
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

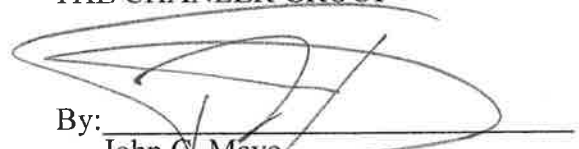
- 20 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and
23 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
24 PRODUCTS for sale or use in California without first providing a “clear and reasonable
25 warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to
26 the harms associated with exposures to the LISTED CHEMICAL;
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 15, 2013

Respectfully Submitted,
THE CHANLER GROUP



By:
John C. Mayo
Attorneys for Plaintiff
LAURENCE VINOCUR