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ENDORSED
FILED
ALAMEDA COUNTY

JUL 8 2013

CLERK OF THE SUPERIOR COURT
By CAROLYN LEMOS
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 MANLEY TOY DIRECT L.L.C.; and DOES
18 1-150, inclusive,

19 Defendants.

Case No. RG 13686244

**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 lead, a toxic chemical found in and on vinyl/PVC cases
5 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 lead present in and on vinyl/PVC cases
8 manufactured, distributed, and offered for sale or use to consumers throughout the State of
9 California.

10 3. Detectable levels of lead are commonly found in and on vinyl/PVC cases that
11 defendants manufacture, distribute, and offer for sale to consumers throughout the State of
12 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 February 27, 1987, California identified and listed
19 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
20 subject to the “clear and reasonable warning” requirements of the act one year later on February
21 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). Lead is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants import, manufacture, sell, and or distribute for sale without a warning
24 in California vinyl/PVC cases containing the LISTED CHEMICAL, including, but not limited
25 to, the *6 in 1 Game Set, Item No. 43017 (#8 03984 43017 3)*. All such vinyl/PVC cases
26 containing the LISTED CHEMICAL are referred to collectively hereinafter as “PRODUCTS.”
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1 section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
2 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
3 ascertained, their true names and capacities shall be reflected in an amended complaint.

4 14. MANLEY TOY and DOES 1-150 shall, where appropriate, collectively be
5 referred to as “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

7 15. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
8 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
9 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
10 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
11 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
12 PRODUCTS.

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

17 17. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
19 association that is a citizen of the State of California, has sufficient minimum contacts in the
20 State of California, and/or otherwise purposefully avails itself of the California market.
21 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
22 California courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Proposition 65 - Against All Defendants)**

25 18. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 17, inclusive.

1 19. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.”

5 20. Proposition 65 states, “[n]o person in the course of doing business shall
6 knowingly and intentionally expose any individual to a chemical known to the state to cause
7 cancer or reproductive toxicity without first giving clear and reasonable warning to such
8 individual” Health & Safety Code § 25249.6.

9 21. On November 21, 2012, plaintiff’s sixty-day notice of violation, together with the
10 requisite certificate of merit, was provided to MANLEY TOY and certain public enforcement
11 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
12 LISTED CHEMICAL, purchasers and users in the State of California are being exposed to the
13 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,
14 without the individual purchasers and users first having been provided with a “clear and
15 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

16 22. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
17 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
18 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
19 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
20 continuous in nature, and will continue to occur in the future.

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

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

1 25. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

4 26. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
5 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
6 reasonably foreseeable use.

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

10 28. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
11 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
12 and/or ingestion.

13 29. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
14 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
15 accidental participation in the manufacture, importation, distribution, sale, and offering of the
16 PRODUCTS for sale or use to individuals in the State of California.

17 30. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers and other individuals in the State of California who were or who would become
19 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
20 reasonably foreseeable uses of the PRODUCTS.

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