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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

15 WHITNEY R. LEEMAN, PH.D.,

16 Plaintiff,

17 v.

18 PARTRADE TRADING COMPANY, LLC;
19 and DOES 1-150, inclusive,

20 Defendants.

FILED

OCT 08 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: J. Chen, Deputy

Case No.

CIV **1304144**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, WHITNEY R.
3 LEEMAN PH.D., in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in hand tools with vinyl/PVC grips sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive toxicity associated with their exposure to DEHP
8 present in or on certain hand tools with vinyl/PVC grips that defendants manufacture, import,
9 distribute, and/or offer for sale to consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on the hand tools with
11 vinyl/PVC grips that defendants manufacture, import, distribute, and/or offer for sale to
12 consumers throughout the State of California.

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

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

24 6. Defendants manufacture, import, distribute, and/or offer for sale hand tools with
25 vinyl/PVC grips containing excessive levels of the LISTED CHEMICAL including, but not
26 limited to, the *Partrade Hoof Pick Vinyl Covered*, #244545 (#7 15519 44545 6). All such hand
27 tools with vinyl/PVC grips containing the LISTED CHEMICAL shall hereinafter be referred to
28 as the “PRODUCTS.”

1 7. Defendants' failure to warn consumers and/or other individuals in the State of
2 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
3 *seq.* about their exposure to the LISTED CHEMICAL and its potential to cause birth defects
4 and other reproductive harm in conjunction with defendants' distribution, importation,
5 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
6 defendants to enjoinder of such conduct as well as civil penalties for each such violation.

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

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

13 PARTIES

14 10. Plaintiff, WHITNEY R. LEEMAN PH.D., is a citizen of the State of California
15 who is dedicated to protecting the health of California citizens through the elimination or
16 reduction of toxic exposures from consumer products; she brings this action in the public
17 interest pursuant to California Health & Safety Code § 25249.7(d).

18 11. Defendant PARTRADE TRADING COMPANY, LLC ("PARTRADE") is a
19 person in the course of doing business within the meaning of California Health & Safety Code §
20 25249.11.

21 12. PARTRADE manufactures, imports, distributes, and/or offers the PRODUCTS
22 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
23 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
25 persons in the course of doing business within the meaning of California Health & Safety Code
26 § 25249.11.

27 14. MANUFACTURER DEFENDANTS engage in the process of researching,
28 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that

1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 in the course of doing business within the meaning of California Health & Safety Code §
5 25249.11.

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

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
10 the course of doing business within the meaning of California Health & Safety Code §
11 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 20. PARTRADE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
21 referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
24 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
25 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
26 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this
27 County with respect to the PRODUCTS.

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1 users first having been provided with a “clear and reasonable warning” regarding such toxic
2 exposures.

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

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

13 30. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
14 sale or use in California by DEFENDANTS contained the LISTED CHEMICAL in an amount
15 above the allowable State limits.

16 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
17 imported, distributed, sold, and/or offered for sale or use in California contained the LISTED
18 CHEMICAL.

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

22 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
23 continues to cause, consumer and workplace exposures to the LISTED CHEMICAL, as such
24 exposure is defined by Title 27 CCR § 25602(b).

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

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1 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
2 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
3 accidental participation in the manufacture, importation, distribution, sale, and/or offering of the
4 PRODUCTS for sale or use to individuals in the State of California.

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

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

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

17 39. As a consequence of the above-described acts, California Health & Safety Code
18 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
19 DEFENDANTS.

20 **PRAYER FOR RELIEF**

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

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

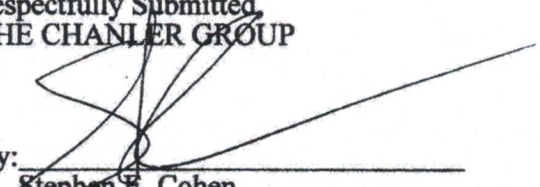
24 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
26 distributing, selling, and/or offering the PRODUCTS for sale or use in California, without
27 providing “clear and reasonable warnings” as defined by California Code of Regulations title
28 27, § 25601 et. seq., as to the harms associated with exposure to the LISTED CHEMICAL;

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- 3. That the Court grant plaintiff her 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: October 4, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 

Stephen E. Cohen
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.