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ELIAS BUTT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

CGC - 13 - 534148

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
THREAD KITS COMPANY; and DOES 1-
150, inclusive,
Defendants.

Case No. _____
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code. § 25249.5 *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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”) and Lead,
5 toxic chemicals that are found in the vinyl/PVC grips of hand tools sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risks of exposures to DEHP and/or Lead present in and on the
8 grips of hand tools manufactured, distributed, and offered for sale or use to consumers
9 throughout the State of California.

10 3. Detectable levels of DEHP and Lead are commonly found in and on the grips of
11 hand tools that defendants manufacture, distribute, and offer for sale to consumers throughout
12 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. On February 27, 1987, California listed Lead pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. Lead became subject
20 to the “clear and reasonable warning” requirements of the act one year later on February 27,
21 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
23 chemical that is known to cause birth defects or other reproductive harm. DEHP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on October
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b). DEHP and Lead are referred to collectively hereinafter as the “LISTED
27 CHEMICALS.”
28

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
4 person in the course of doing business within the meaning of Health and Safety Code s sections
5 25249.6 and 25249.11.

6 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
7 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
8 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
9 California.

10 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
11 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
12 and 25249.11.

13 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
15 in the State of California.

16 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
17 the course of doing business within the meaning of Health and Safety Code sections 25249.6
18 and 25249.11.

19 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
20 State of California.

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

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 28. On July 11, 2012, plaintiff’s sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to THREAD KITS and certain public enforcement
9 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
10 LISTED CHEMICALS, workers, consumers, and other individuals in the State of California
11 were being exposed to the LISTED CHEMICALS resulting from their reasonably foreseeable
12 use of the PRODUCTS, without the individual purchasers and users first having been provided
13 with a “clear and reasonable warning” regarding such toxic exposures, as required by
14 Proposition 65.

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

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

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

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

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

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

13 36. DEFENDANTS' intend for such exposures to the LISTED CHEMICALS from the
14 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
15 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
16 use to individuals in the State of California.

17 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
18 workers, consumers and other individuals in California not covered by California's
19 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,
20 exposed to the LISTED CHEMICALS as a result of their reasonably foreseeable uses of the
21 PRODUCTS.

22 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
23 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
24 CHEMICALS through dermal contact and/or ingestion, resulting from the reasonably
25 foreseeable uses of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable
26 warning," have suffered, and continue to suffer, irreparable harm for which they have no plain,
27 speedy, or adequate remedy at law.

