

ENDORSED
FILED
ALAMEDA COUNTY

NOV 15 2013

CLERK OF SUPERIOR COURT
By Glenn Baker Deputy

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

15 WHITNEY R. LEEMAN, PH.D.,

16 Plaintiff.

17 v.

18 BAYCO PRODUCTS, INC.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. RG 13703340

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

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 vinyl/PVC light bulb changer 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 vinyl/PVC light bulb changer 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 vinyl/PVC light bulb
11 changer grips that defendants manufacture, import, distribute, and/or offer for sale to consumers
12 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 vinyl/PVC light
25 bulb changer grips containing excessive levels of the LISTED CHEMICAL including, but not
26 limited to, the *7 Piece Light Bulb Changing Kit LBC-602DA (#0 17398 450409)*. All such
27 vinyl/PVC light bulb changer grips containing the LISTED CHEMICAL shall hereinafter be
28 referred to as the “PRODUCTS.”

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. BAYCO, 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 Alameda 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 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
27 County with respect to the PRODUCTS.
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1 28. DEFENDANTS have engaged in the manufacture, distribution, sale, and/or
2 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
3 25249.6, and DEFENDANTS' manufacture, distribution, sales, and/or offering of the
4 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
5 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notice of violation.
6 As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to
7 occur in the future.

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

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

14 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
15 imported, distributed, sold, and/or offered for sale or use in California contained 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 the reasonably foreseeable use of the PRODUCTS.

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

23 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would 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 use of the PRODUCTS would occur by their deliberate, non-
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1 accidental participation in the manufacture, importation, distribution, sale, and/or 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/or other individuals in the State of California who were, or who could become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable use 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. As a consequence of the above-described acts, DEFENDANTS are liable for a
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
14 Safety Code § 25249.7(b).

15 39. As a consequence of the above-described acts, California Health & Safety Code
16 § 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 California Health & Safety Code § 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

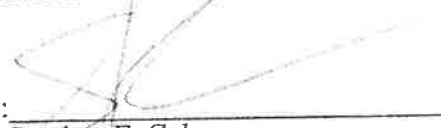
22 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
24 distributing, selling, and/or offering the PRODUCTS for sale or use in California, without
25 providing “clear and reasonable warnings” as defined by California Code of Regulations title
26 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: November 4, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 

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