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FILED

JAN 28 2014

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

6 Attorneys for Plaintiff
7 DR. WHITNEY R. LEEMAN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11
12 DR. WHITNEY R. LEEMAN,

13 Plaintiff.

14 v.

15 AMERICAN GREETINGS CORPORATION;
16 and DOES 1-150, inclusive,

17 Defendants.

Case No. CV ~~1400348~~ 31

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

VIA FAX

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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, DR. WHITNEY R.
3 LEEMAN, 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 greeting cards with vinyl/PVC components 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 greeting cards with vinyl/PVC components that defendants manufacture,
9 import, 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 greeting cards with
11 vinyl/PVC components 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 greeting cards
25 with vinyl/PVC components containing excessive levels of the LISTED CHEMICAL including,
26 but not limited to, the *Basketball Father’s Day Greeting Card*, #12020611 (#0 67008 98934 8).
27 All such greeting cards with vinyl/PVC components containing the LISTED CHEMICAL shall
28 hereinafter be referred to as the “PRODUCTS.”

1 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 County with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

15 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 23, inclusive.

17 25. The citizens of the State of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*
19 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
20 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

21 26. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual....” (*Ibid.*)

25 27. On or about May 31, 2013, a sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to AMERICAN GREETINGS and various public
27 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS,
28 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL

1 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
2 purchasers and users first having been provided with a “clear and reasonable warning”
3 regarding such toxic exposures.

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

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

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

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

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

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


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

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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: January 24, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

Stephen E. Cohen
Attorneys for Plaintiff
DR. WHITNEY R. LEEMAN