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ENDORSED  
FILED  
ALAMEDA COUNTY  
DEC 11 2013  
CLERK OF THE SUPERIOR COURT  
By MARGARET J. DOWNI  
Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
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12 DR. WHITNEY R. LEEMAN, ANTHONY  
13 E. HELD, PhD., P.E.,

14 Plaintiffs,

15 v.

16 AMERICAN DIAGNOSTIC  
17 CORPORATION; HAMILTON BELL CO.,  
18 INC.; and DOES 1-150, inclusive,

19 Defendants.

Case No. **RG13706417**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiffs DR. WHITNEY R.  
3 LEEMAN and ANTHONY E. HELD., PhD., P.E., in the public interest of the citizens of the  
4 State of California to enforce the People's right to be informed of the presence of lead, a toxic  
5 chemical found in instrument pouches/cases and vinyl/PVC tape measures.

6 2. By this Complaint, plaintiffs seek to remedy defendants' continuing failure to  
7 warn California citizens about the risk of exposure to lead present in and on the instrument  
8 pouches/cases and vinyl/PVC tape measures manufactured, distributed, and offered for sale or  
9 use to consumers throughout the State of California.

10 3. Detectable levels of lead are commonly found in and on the instrument  
11 pouches/cases and vinyl/PVC tape measures that defendants manufacture, distribute, and offer  
12 for sale to consumers throughout 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. 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. Lead is  
22 referred to hereinafter as the "LISTED CHEMICAL."

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale instrument  
24 pouches/cases and vinyl/PVC tape measures containing lead as follows:

25 a. Defendants manufacture, distribute, import, sell, and/or offer for sale  
26 instrument pouches/cases containing lead without a warning, including, but not limited  
27 to, the *EKG Caliper*, #395, UPC #6 34782 00191 9; #7 49361 13510 4.  
28



1           13. Defendant AMERICAN DIAGNOSTIC CORPORATION (“AMERICAN  
2 DIAGNOSTIC”) is a person in the course of doing business within the meaning of Health and  
3 Safety Code section 25249.11.

4           14. AMERICAN DIAGNOSTIC manufactures, imports, distributes, sells, and/or  
5 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
7 State of California.

8           15. Defendant HAMILTON BELL CO., INC. (“HAMILTON”) is a person in the  
9 course of doing business within the meaning of Health and Safety Code section 25249.11.

10           16. HAMILTON manufactures, imports, distributes, sells, and/or offers the  
11 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
12 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
13 State of California.

14           17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
15 persons in the course of doing business within the meaning of Health and Safety Code section  
16 25249.11.

17           18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
18 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
19 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
20 California.

21           19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
22 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

23           20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
24 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
25 in the State of California.

26           21. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
27 the course of doing business within the meaning of Health and Safety Code section 25249.11.  
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1 **FIRST CAUSE OF ACTION**

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

3 28. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein,  
4 Paragraphs 1 through 27, inclusive.

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

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

13 31. On May 31, 2013, plaintiff DR. WHITNEY R. LEEMAN’s sixty-day notice of  
14 violation, together with the requisite certificate of merit, was provided to AMERICAN  
15 DIAGNOSTIC and certain public enforcement agencies stating that, as a result of  
16 DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers  
17 and users in the State of California were being exposed to the LISTED CHEMICAL resulting  
18 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and  
19 users first having been provided with a “clear and reasonable warning” regarding such toxic  
20 exposures, as required by Proposition 65.

21 32. On May 31, 2013, plaintiff DR. WHITNEY R. LEEMAN’s sixty-day notice of  
22 violation, together with the requisite certificate of merit, was provided to HAMILTON and  
23 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the  
24 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of  
25 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
26 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
27  
28

1 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
2 required by Proposition 65.

3 33. On September 26, 2013, plaintiff ANTHONY E. HELD, PhD., P.E.’s  
4 supplemental sixty-day notice of violation, together with the requisite certificate of merit, was  
5 provided to AMERICAN DIAGNOSTIC and certain public enforcement agencies stating that,  
6 as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL,  
7 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL  
8 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual  
9 purchasers and users first having been provided with a “clear and reasonable warning”  
10 regarding such toxic exposures, as required by Proposition 65.

11 34. On September 26, 2013, plaintiff ANTHONY E. HELD, PhD., P.E.’s  
12 supplemental sixty-day notice of violation, together with the requisite certificate of merit, was  
13 provided to HAMILTON and certain public enforcement agencies stating that, as a result of  
14 DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers  
15 and users in the State of California were being exposed to the LISTED CHEMICAL resulting  
16 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and  
17 users first having been provided with a “clear and reasonable warning” regarding such toxic  
18 exposures, as required by Proposition 65.

19 35. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
20 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
21 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
22 plaintiffs’ two sixty-day notices of violation. As such, DEFENDANTS’ violations are ongoing  
23 and continuous in nature, and will continue to occur in the future.

24 36. After receiving plaintiffs’ two sixty-day notices of violation, the appropriate  
25 public enforcement agencies have failed to commence and diligently prosecute a cause of action  
26 on either notice against DEFENDANTS under Proposition 65.

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

4           38. DEFENDANTS knew or should have known that the PRODUCTS they  
5 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
6 CHEMICAL.

7           39. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
8 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during  
9 reasonably foreseeable use.

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

13          41. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
14 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
15 and/or ingestion.

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

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

24          44. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
25 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
26 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold  
27 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
28

1 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

2 45. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
3 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
4 for each violation.

5 46. As a consequence of the above-described acts, Health and Safety Code  
6 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
7 DEFENDANTS.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiffs pray for judgment against DEFENDANTS as follows:

10 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
11 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

12 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
13 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
14 offering the PRODUCTS for sale or use in California without first providing a “clear and  
15 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
16 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

17 3. That the Court grant plaintiffs their reasonable attorneys’ fees and costs of suit;  
18 and

19 4. That the Court grant such other and further relief as may be just and proper.

20 Dated: December 10, 2013

21 Respectfully Submitted,  
22 THE CHANLER GROUP

23 By: \_\_\_\_\_

24 Jonathan A. Bornstein  
25 Attorneys for Plaintiffs  
26 DR. WHITNEY R. LEEMAN and  
27 ANTHONY E. HELD., PhD., P.E.  
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