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ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2013 OCT 17 PM 1:53

CLERK OF THE COURT

BY: _____
DEPUTY CLERK

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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

TRIMAS CORPORATION; CEQUENT
CONSUMER PRODUCTS, INC.; and DOES
1-150, inclusive,

Defendants.

Case No. **CGC 13-534927**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

NATURE OF THE ACTION

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1. This Complaint is a representative action brought by plaintiff WHITNEY R. LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the People’s right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in certain automotive storage organizers sold by defendants in California.

2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn California citizens and other individuals about the risks of exposures to DEHP present in and on the vinyl/PVC handles and/or other components of the automotive storage organizers manufactured, distributed, and offered for sale or use to consumers and other individuals throughout the State of California.

3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC handles and other components of the automotive storage organizers that defendants manufacture, distribute, and offer for sale to consumers and other individuals throughout the State of California.

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

5. On October 24, 2003, California identified and listed DEHP pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the “clear and reasonable warning” requirement one year later on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

6. Defendants manufacture, distribute, import, sell, and offer for sale without warning in California, automotive storage organizers with vinyl/PVC handles and other

1 components containing the LISTED CHEMICAL, including, but not limited to, the *ROLA*
2 *M.O.V.E. Organizer*, #59001 (UPC No. 0 42899 59001 9). All such automotive storage
3 organizers with vinyl/PVC handles and/or other components containing DEHP are referred to
4 collectively hereinafter as the “PRODUCTS.”

5 7. Defendants’ failure to warn consumers and other workers, consumers, and other
6 individuals in the State of California of the health hazards associated with exposures to the
7 LISTED CHEMICAL in conjunction with defendants’ sales of the PRODUCTS are violations
8 of Proposition 65, and subject defendants, and each of them, to enjoinder of such conduct as
9 well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

14 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
15 penalties against defendants for their violations of Proposition 65.

16 **PARTIES**

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

21 11. Defendant TRIMAS CORPORATION (“TRIMAS”) is a person in the course of
22 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

23 12. TRIMAS manufactures, imports, distributes, sells, and/or offers the PRODUCTS
24 for sale or use in California, or it implies by its conduct that it manufactures, imports, distributes,
25 sells, and/or offers the PRODUCTS for sale or use in the State of California.

1 13. Defendant CEQUENT CONSUMER PRODUCTS, INC. (CEQUENT) is a person
2 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
3 and 25249.11.

4 14. CEQUENT manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or it 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. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
14 California.

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

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

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

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

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

4 22. TRIMAS, CEQUENT, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
6 referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in San Francisco Superior Court, pursuant to Code of Civil
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
10 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
11 wrongful conduct occurred, and continue to occur, in this county, and/or because
12 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to
13 the PRODUCTS.

14 24. The California Superior Court has jurisdiction over this action pursuant to
15 California Constitution Article VI, section 10, which grants the Superior Court "original
16 jurisdiction in all causes except those given by statute to other trial courts." The statute under
17 which this action is brought does not specify any other basis of subject matter jurisdiction.

18 25. The California Superior Court has jurisdiction over DEFENDANTS based on
19 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
20 association that is a citizen of the State of California, has sufficient minimum contacts in the
21 State of California, and/or otherwise purposefully avails itself of the California market.
22 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
23 California courts consistent with traditional notions of fair play and substantial justice.

24 **FIRST CAUSE OF ACTION**

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

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 25, inclusive.
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1 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.”

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

9 29. On June 19, 2013, plaintiff served a sixty-day notice of violation, together with
10 the requisite certificate of merit, on TRIMAS, CEQUENT, and certain public enforcement
11 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
12 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
13 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
14 without the individual purchasers and users first having been provided with a “clear and
15 reasonable warning” regarding the harms associated with such exposures, as required by
16 Proposition 65.

17 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
18 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
19 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
20 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
21 the future.

22 31. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
23 public enforcement agencies have commenced and diligently prosecuted a cause of action
24 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
25 subject of plaintiff’s notice of violation.

26 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
27 offer for sale or use in California, cause exposures to the LISTED CHEMICAL as a result of the
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1 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and
2 endured by consumers and other individuals in California are not exempt from the “clear and
3 reasonable” warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

4 33. DEFENDANTS have knowledge that the PRODUCTS they manufacture, import,
5 distribute, sell, and offer for sale in California contain the LISTED CHEMICAL.

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

8 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
9 continues to cause, consumer exposures to the LISTED CHEMICAL, as defined by title 27 of
10 the California Code of Regulations, section 25602(b).

11 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
12 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
13 and/or ingestion.

14 37. DEFENDANTS intend that exposures to the LISTED CHEMICAL from the
15 reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental
16 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
17 for sale or use to consumers and other individuals in California.

18 38. DEFENDANTS have failed to provide a “clear and reasonable warning” to those
19 consumers and other individuals in California who are or who will be exposed to the LISTED
20 CHEMICAL through dermal contact and/or ingestion resulting from their use of the
21 PRODUCTS.

22 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
23 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
24 contact or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell
25 without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer,
26 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

