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ENDORSED
FILED
Superior Court of California
County of San Francisco
NOV 19 2013
CLERK OF THE COURT
BY: MEREDITH GRIER
Deputy Clerk

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

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
E & E CO., LTD.; and DOES 1-150, inclusive,
Defendants.

CGC-13-535569
Case No. _____
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 plaintiff ANTHONY E.
3 HELD, PH.D., P.E. 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"), a toxic
5 chemical that is found in pillows with vinyl/PVC covers that are 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 present in and on the covers of
8 pillows manufactured, distributed, and offered for sale or use to consumers throughout the State
9 of California.

10 3. Detectable levels of DEHP are commonly found in and on covers of pillows that
11 defendants import, manufacture, distribute, ship, sell and/or offer for sale to consumers
12 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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. DEHP became
20 subject to the "clear and reasonable warning" requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the "LISTED CHEMICAL."

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, pillows with vinyl/PVC covers or other exterior components containing
25 the LISTED CHEMICAL, including, but not limited to, the *Threshold Pillow, F16668983,*
26 *V1138719, #065 15 1882 ID142444, (UPC No. 4 90651 51882 3).* All such pillows with
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1 vinyl/PVC covers or other exterior components containing the LISTED CHEMICAL is referred
2 to collectively hereinafter as the "PRODUCTS."

3 7. Defendants' failure to warn workers, consumers and other individuals in
4 California of the harms associated with exposures to the LISTED CHEMICAL in conjunction
5 with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL is violations of
6 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties
7 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants, and each of them, for each violation of Proposition 65.

14 PARTIES

15 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of harmful exposures to toxic chemicals from consumer products. He brings this
18 action in the public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant E & E Co., Ltd. ("E & E") is a person in the course of doing business
20 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

21 12. E & E manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
22 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
23 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
25 person in the course of doing business within the meaning of Health and Safety Code s sections
26 25249.6 and 25249.11.

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1 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
2 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
3 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
4 California.

5 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
6 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
7 and 25249.11.

8 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
9 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
10 in the State of California.

11 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
12 the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

14 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
15 State of California.

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

21 20. E & E, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
22 and RETAILER DEFENDANTS are hereinafter collectively referred to as "DEFENDANTS."

23 VENUE AND JURISDICTION

24 21. Venue is proper in the County of San Francisco, pursuant to Code of Civil
25 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
26 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
27 wrongful conduct occurred, and continue to occur, in this county, and/or because
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1 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to
2 the PRODUCTS.

3 22. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, section 10, which grants the Superior Court “original
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
6 which this 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 or
9 association that is a citizen of the State of California, has sufficient minimum contacts in the
10 State of California, and/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. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm.”

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” Health & Safety Code § 25249.6.

25 27. On August 30, 2013, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to E & E and certain public enforcement agencies
27 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
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1 CHEMICAL, workers, consumers, and other individuals in the State of California were being
2 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
3 PRODUCTS, without the individual purchasers and users first having received a “clear and
4 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

13 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
15 reasonably foreseeable uses of these products result in exposures that require a “clear and
16 reasonable” warning under Proposition 65.

17 31. DEFENDANTS knew or should have known that the PRODUCTS they
18 manufacture, import, distribute, sell, and offer for sale or use in California contain 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 through dermal contact and/or ingestion during reasonably foreseeable use.

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

25 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
26 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
27 and/or ingestion.
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1 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
2 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
3 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
4 use to individuals in the State of California.

5 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
6 workers, consumers and other individuals in California not covered by California's
7 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,
8 exposed to the LISTED CHEMICAL.

9 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
10 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
11 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
12 uses of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning,"
13 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
14 adequate remedy at law.

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

18 39. As a consequence of the above-described acts, Health and Safety Code
19 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
20 DEFENDANTS.

21 **PRAYER FOR RELIEF**

22 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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


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

- 4 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 5 4. That the Court grant such other and further relief as may be just and proper.

6 Dated: November 14, 2013

Respectfully Submitted,
THE CHANLER GROUP

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10 By: 
11 Brian C. Johnson
12 Attorneys for Plaintiff
13 ANTHONY E. HELD, PH.D., P.E.

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