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ENDORSED
FILED
ALAMEDA COUNTY

MAY 29 2014

CLERK OF THE SUPERIOR COURT

By _____ Deputy
A. KAWAN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 DR. WHITNEY R. LEEMAN; and ANTHONY
13 E. HELD, PH.D., P.E.

14 Plaintiffs,

15 v.

16 SNAP-ON INCORPORATED; and DOES 1-
17 150, inclusive,

18 Defendants.

Case No. RG14727199

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 lead, a toxic chemical found in hand tools with
5 vinyl/PVC grips sold in the State of California, and a representative action brought by Plaintiff,
6 ANTHONY E. HELD, Ph.D., P.E., in the public interest of the citizens of the State of
7 California, to enforce the People’s right to be informed of the presence of di(2-
8 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC pouches sold in the State
9 of California.

10 2. Plaintiff DR. WHITNEY R. LEEMAN and Plaintiff ANTHONY E. HELD,
11 PH.D, P.E. shall collectively be referred to as the “PLAINTIFFS.”

12 3. By this Complaint, PLAINTIFFS seek to remedy defendants’ continuing failure
13 to warn California citizens about reproductive toxicity associated with their exposure to lead
14 present in or on hand tools with vinyl/PVC grips and DEHP present in or on vinyl/PVC pouches
15 that defendants manufacture, import, distribute, sell and/or offer for sale to consumers
16 throughout the State of California.

17 4. High levels of lead are commonly found in and on hand tools with vinyl/PVC
18 grips that defendants manufacture, import, distribute, sell and/or offer for sale to consumers
19 throughout the State of California.

20 5. High levels of DEHP are commonly found in and on vinyl/PVC pouches that
21 defendants manufacture, import, distribute, sell and/or offer for sale to consumers throughout
22 the State of California.

23 6. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
24 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
25 course of doing business shall knowingly and intentionally expose any individual to a chemical
26 known to the State to cause cancer or reproductive toxicity without first giving clear and
27 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)
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1 7. On February 27, 1987, California identified and listed lead as a chemical known
2 to cause birth defects and other reproductive harm. Lead became subject to the warning
3 requirement one year later and was therefore subject to the “clear and reasonable warning”
4 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*
5 *Health & Safety Code § 25249.8.*)

6 8. On October 24, 2003, California identified and listed DEHP as a chemical known
7 to cause birth defects and other reproductive harm. DEHP became subject to the warning
8 requirement one year later and was therefore subject to the “clear and reasonable warning”
9 requirements of Proposition 65 beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
10 *Health & Safety Code § 25249.8.*)

11 9. Defendants manufacture, import, distribute, sell and/or offer for sale hand tools
12 with vinyl/PVC grips containing excessive levels of the lead including, but not limited to, the
13 *Bahco Grass Shears, GS-76-E (#6 22422 26031 4; #7 311518 274979)*(collectively referred to
14 as the “LEAD PRODUCTS”) and vinyl/PVC pouches containing excessive levels of DEHP
15 including, but not limited to, the *Williams Vinyl Pouch, #50001* (collectively referred to as the
16 “DEHP PRODUCTS”).

17 10. All such LEAD PRODUCTS and DEHP PRODUCTS shall hereinafter be
18 referred to collectively as the “PRODUCTS.”

19 11. Lead and DEHP shall hereinafter be referred to collectively as the “LISTED
20 CHEMICALS,” however; LISTED CHEMICALS shall refer to lead for the LEAD
21 PRODUCTS and DEHP for the DEHP PRODUCTS.

22 12. Defendants’ failure to warn consumers and/or other individuals in the State of
23 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
24 *seq.*, about their exposure to the LISTED CHEMICALS and their potential to cause birth
25 defects and other reproductive harm in conjunction with defendants’ manufacture, importation,
26 distribution, sale, and/or offering for sale of the PRODUCTS is a violation of Proposition 65
27 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
28 violation.

1 13. For defendants’ violations of Proposition 65, plaintiffs seek preliminary injunctive
2 and permanent injunctive relief to compel defendants to provide purchasers or users of the
3 PRODUCTS with the required warning regarding the health hazards of the LISTED
4 CHEMICALS. (Cal. Health & Safety Code § 25249.7(a).)

5 14. Plaintiffs also seek civil penalties against defendants for their violations of
6 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

7 **PARTIES**

8 15. Plaintiff DR. WHITNEY R. LEEMAN is a citizen of the State of California who
9 is dedicated to protecting the health of California citizens through the elimination or reduction
10 of toxic exposures from consumer products; she brings this action in the public interest pursuant
11 to California Health & Safety Code § 25249.7(d).

12 16. Plaintiff ANTHONY E. HELD, Ph.D., P.E. is a citizen of the State of California
13 who is dedicated to protecting the health of California citizens through the elimination or
14 reduction of toxic exposures from consumer products; he brings this action in the public interest
15 pursuant to California Health & Safety Code § 25249.7(d).

16 17. Defendant SNAP-ON INCORPORATED (“SNAP-ON”) is a person in the course
17 of doing business within the meaning of California Health & Safety Code § 25249.11.

18 18. SNAP-ON manufactures, imports, distributes, sells and/or offers the PRODUCTS
19 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
20 distributes, sells and/or offers the PRODUCTS for sale or use in the State of California.

21 19. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
22 persons in the course of doing business within the meaning of California Health & Safety Code
23 § 25249.11.

24 20. MANUFACTURER DEFENDANTS engage in the process of researching,
25 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
26 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
27 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

28 21. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons

1 in the course of doing business within the meaning of California Health & Safety Code §
2 25249.11.

3 22. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
4 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
5 in the State of California.

6 23. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
7 the course of doing business within the meaning of California Health & Safety Code §
8 25249.11.

9 24. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
10 State of California.

11 25. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
12 unknown to the PLAINTIFFS, who therefore sue said defendants by their fictitious name
13 pursuant to Code of Civil Procedure § 474. PLAINTIFFS are informed and believe, and on that
14 basis allege, that each of the fictitiously named defendants is responsible for the acts and
15 occurrences alleged herein. When ascertained, their true names shall be reflected in an
16 amended complaint.

17 26. SNAP-ON, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 27. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
22 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
23 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
24 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
25 County with respect to the PRODUCTS.

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

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

9 **FIRST CAUSE OF ACTION**

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

11 30. PLAINTIFFS reallege and incorporate by reference, as if fully set forth herein,
12 Paragraphs 1 through 29, inclusive.

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

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

21 33. On or about May 1, 2013, Plaintiff DR. WHITNEY R. LEEMAN served a sixty-
22 day notice of violation, together with the requisite certificate of merit, on SNAP-ON and
23 various public enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the
24 LEAD PRODUCTS, purchasers and users in the State of California were being exposed to lead
25 resulting from the reasonably foreseeable use of the LEAD PRODUCTS, without the individual
26 purchasers and users first having been provided with a “clear and reasonable warning”
27 regarding such toxic exposures.

1 34. On or about October 18, 2013, Plaintiff ANTHONY E. HELD, Ph.D., P.E. served
2 a sixty-day notice of violation, together with the requisite certificate of merit, on SNAP-ON and
3 various public enforcement agencies stating that, as a result of the DEFENDANTS' sales of the
4 DEHP PRODUCTS, purchasers and users in the State of California were being exposed to
5 DEHP resulting from the reasonably foreseeable use of the DEHP PRODUCTS, without the
6 individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures.

8 35. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
9 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
10 Code § 25249.6, and DEFENDANTS' manufacture, importation, distribution, sales, and/or
11 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
12 25249.6 has continued to occur beyond DEFENDANTS' receipt of PLAINTIFFS' sixty-day
13 notices of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
14 and will continue to occur in the future.

15 36. After receipt of the claims asserted in the sixty-day notices of violation, the
16 appropriate public enforcement agencies have failed to commence and diligently prosecute a
17 cause of action against DEFENDANTS under Proposition 65.

18 37. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
19 sale or use in California by DEFENDANTS contained the LISTED CHEMICALS in amounts
20 above the allowable State limits.

21 38. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
22 imported, distributed, sold, and/or offered for sale or use in California contained the LISTED
23 CHEMICALS.

24 39. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
25 to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
26 during the reasonably foreseeable use of the PRODUCTS.

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

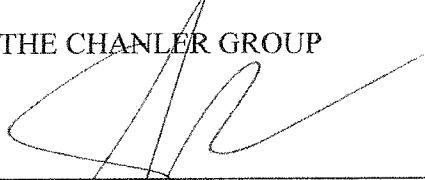
2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing, distributing, selling, and/or offering the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by California Code of Regulations title 27, § 25601 et. seq., as to the harms associated with exposure to the LISTED CHEMICALS;

3. That the Court grant PLAINTIFFS their 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: May 29, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

Stephen E. Cohen
Attorneys for Plaintiffs
DR. WHITNEY R. LEEMAN
ANTHONY E. HELD, PH.D., P.E