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ENDORSED
FILED
ALAMEDA COUNTY

MAY 15 2014

CLERK OF THE SUPERIOR COURT
By Elvira Barbero

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

11
12 DR. WHITNEY R. LEEMAN,

13 Plaintiff,

14 v.

15 TRADEMARK GAMES, INC; and DOES 1-
16 150, inclusive,

17 Defendants.

Case No. _____

RG 14725565

**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 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 stools with vinyl/PVC upholstery sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on the stools with
8 vinyl/PVC upholstery manufactured, distributed, and offered for sale or use to consumers
9 throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on the stools with
11 vinyl/PVC upholstery that defendants manufacture, distribute, and 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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and 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/or offer for sale stools with
24 vinyl/PVC upholstery containing DEHP as follows:

25 a. Defendants manufacture, distribute, import, sell, and/or offer for sale
26 stools with vinyl/PVC upholstery containing DEHP without a warning, including, but not
27 limited to, the *Bud Light Lime Bar Stool, AB1000-BLLIME*.

1 15. 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 16. 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 section 25249.11.

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

10 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
11 the course of doing business within the meaning of Health and Safety Code section 25249.11.

12 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 21. TRADEMARK, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
21 referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

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

3 23. 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 24. 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 availing renders the exercise of personal jurisdiction by California
12 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 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 24, inclusive.

17 26. 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 27. 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 28. On November 15, 2013, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to TRADEMARK and certain public enforcement
27 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
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1 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
2 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
3 without the individual purchasers and users first having been provided with a “clear and
4 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

5 29. 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 30. 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 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
15 a “clear and reasonable” warning under Proposition 65.

16 32. DEFENDANTS knew or should have known that the PRODUCTS they
17 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
18 CHEMICAL.

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

22 34. 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 35. DEFENDANTS had 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 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
2 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
3 accidental participation in the manufacture, importation, distribution, sale, and offering of the
4 PRODUCTS for sale or use to individuals in the State of California.

5 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
6 consumers and other individuals in the State of California who were or who would become
7 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
8 reasonably foreseeable uses of the PRODUCTS.

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

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

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

20 **PRAYER FOR RELIEF**

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

- 22 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
23 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
26 offering the PRODUCTS for sale or use in California without first providing a “clear and
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reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
et seq., as to the harms associated with exposures the LISTED CHEMICAL;

- 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: May 15, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 
Jonathan A. Bornstein
Attorneys for Plaintiff
DR. WHITNEY R. LEEMAN