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7 PAUL WOZNIAK

ENDORSED
FILED
ALAMEDA COUNTY

SEP 10 2014
CLERK OF THE SUPERIOR COURT
By _____ Deputy

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

RG 14740016

11 ANTHONY E. HELD, PhD., P.E. and
12 PAUL WOZNIAK,

13 Plaintiffs,

14 v.

15 CREEDENCE HOLDINGS, LLC, WAL-
16 MART STORES, INC., TEAM BEANS, LLC;
17 and DOES 1-150, inclusive,

18 Defendants.

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 plaintiffs ANTHONY E.
3 HELD, PhD, P.E. and PAUL WOZNIAK, in the public interest of the citizens of the State of
4 California to enforce the People’s right to be informed of the presence of di(2-
5 ethylhexyl)phthalate (“DEHP”), and Di-n-butyl phthalate (“DBP”) toxic chemicals found in
6 vinyl/PVC straps and vinyl/PVC tote bags sold in California.

7 2. By this Complaint, plaintiffs seek to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to DEHP and DBP present in and on the
9 vinyl/PVC straps and vinyl/PVC tote bags manufactured, distributed, and offered for sale or use
10 to consumers throughout the State of California.

11 3. Detectable levels of DEHP and DBP are commonly found in and on the
12 vinyl/PVC straps and vinyl/PVC tote bags that defendants manufacture, distribute, and offer for
13 sale to consumers throughout the State of California.

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

19 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
21 subject to the “clear and reasonable warning” requirements of the act one year later on October
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
23 25249.10(b). Pursuant to Proposition 65, on December 2, 2005, California identified and listed
24 DBP as a chemical known to cause birth defects and other reproductive harm. DBP became
25 subject to the “clear and reasonable warning” requirements of the act one year later on
26 December 2, 2006. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
27 25249.10(b). DEHP and DBP are referred to hereinafter as the “LISTED CHEMICALS.”
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1 reduction of toxic exposures from consumer products; and he brings this action in the public
2 interest pursuant to Health and Safety Code section 25249.7(d).

3 13. Plaintiff PAUL WOZNIAK is a citizen of the State of California who is dedicated
4 to protecting the health of California citizens through the elimination or reduction of toxic
5 exposures from consumer products; and he brings this action in the public interest pursuant to
6 Health and Safety Code section 25249.7(d).

7 14. Defendant CREEDENCE HOLDINGS, LLC (“CREEDENCE”) is a person in the
8 course of doing business within the meaning of Health and Safety Code section 25249.11.

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

13 16. Defendant WAL-MART STORES, INC. (“WAL-MART”) is a person in the
14 course of doing business within the meaning of Health and Safety Code section 25249.11.

15 17. WAL-MART manufactures, imports, distributes, sells, and/or offers the
16 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
17 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
18 State of California.

19 18. Defendant TEAM BEANS, LLC (“TEAM BEANS”) is a person in the course of
20 doing business within the meaning of Health and Safety Code section 25249.11.

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

25 20. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
26 persons in the course of doing business within the meaning of Health and Safety Code section
27 25249.11.
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1 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
2 PRODUCTS.

3 29. 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 30. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiffs’ 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 31. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein,
16 Paragraphs 1 through 30, inclusive.

17 32. 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 33. 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 34. On March 26, 2014, plaintiff PAUL WOZNIAK’s sixty-day notice of violation,
26 together with the requisite certificate of merit, was provided to CREEDENCE and WAL-MART
27 and certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
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1 PRODUCTS containing DBP, purchasers and users in the State of California were being
2 exposed to DBP resulting from their reasonably foreseeable use of the PRODUCTS, without the
3 individual purchasers and users first having been provided with a “clear and reasonable
4 warning” regarding such toxic exposures, as required by Proposition 65.

5 35. On April 30, 2014, plaintiff ANTHONY E. HELD’s sixty-day notice of violation,
6 together with the requisite certificate of merit, was provided to TEAM BEANS and certain
7 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
8 PRODUCTS containing DEHP, purchasers and users in the State of California were being
9 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
10 the individual purchasers and users first having been provided with a “clear and reasonable
11 warning” regarding such toxic exposures, as required by Proposition 65.

12 36. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
13 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
14 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
15 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
16 continuous in nature, and will continue to occur in the future.

17 37. After receiving plaintiffs’ sixty-day notices of violation, the appropriate public
18 enforcement agencies have failed to commence and diligently prosecute a cause of action
19 against DEFENDANTS under Proposition 65.

20 38. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
21 or use in California by DEFENDANTS contain the LISTED CHEMICALS such that they
22 require a “clear and reasonable” warning under Proposition 65.

23 39. DEFENDANTS knew or should have known that the PRODUCTS they
24 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
25 CHEMICALS.

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1 40. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
2 to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
3 during reasonably foreseeable use.

4 41. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
5 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
6 defined by title 27 of the California Code of Regulations, section 25602(b).

7 42. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
8 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact
9 and/or ingestion.

10 43. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
11 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
12 accidental participation in the manufacture, importation, distribution, sale, and offering of the
13 PRODUCTS for sale or use to individuals in the State of California.

14 44. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in the State of California who were or who would become
16 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
17 reasonably foreseeable uses of the PRODUCTS.

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

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

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1 47. As a consequence of the above-described acts, Health and Safety Code
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
3 DEFENDANTS.


4 **PRAYER FOR RELIEF**

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

- 6 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
7 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 8 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
9 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
10 offering the PRODUCTS for sale or use in California without first providing a “clear and
11 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
12 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;
- 13 3. That the Court grant plaintiffs their reasonable attorneys’ fees and costs of suit;
14 and
- 15 4. That the Court grant such other and further relief as may be just and proper.

16 Dated: September 9, 2014

17 Respectfully Submitted,
18 THE CHANLER GROUP

19 By: 
20 Jonathan A. Bornstein
21 Attorneys for Plaintiffs
22 ANTHONY E. HELD, PhD., P.E, and
23 PAUL WOZNIAK
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