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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN; LAURENCE
VINOCUR; and PAUL WOZNIAK

Plaintiffs,

v.

TRACTOR SUPPLY COMPANY; LARIN
CORP.; TAYLOR BRANDS, LLC;
PLASTICOLOR MOLDED PRODUCTS,
INC.; and DOES 1-150, inclusive,

Defendants.

Case No. RG14723588

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint institutes a representative action brought by plaintiffs
3 WHITNEY R. LEEMAN, LAURENCE VINOCUR, and PAUL WOZNIAK (collectively
4 “Plaintiffs”) in the public interest of the citizens of the State of California to enforce the People’s
5 right to be informed about (a) exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
6 found in the grips and other vinyl/PVC components of tape measures, hand tools, and spring clamps
7 sold in California, and (b) exposures to tris(1,3-dichloro-2-propyl)phosphate (“TDCPP”), a toxic
8 chemical found in the foam padding of upholstered stools sold in California. DEHP and TDCPP are
9 referred to collectively herein as the “LISTED CHEMICALS.”

10 2. By this First Amended Complaint, Plaintiffs seek to remedy defendants’ failure to
11 warn California citizens, consumers, and other individuals about the risks associated with exposures
12 to the LISTED CHEMICALS present in and on the products manufactured, sold, distributed, and/or
13 offered for sale or use to consumers and other individuals in California.

14 3. Detectable levels of DEHP are commonly found in and on the hand straps of tape
15 measures, and the grips of tools and clamps that defendants import, manufacture, distribute for sale,
16 ship for sale, sell and/or offer for sale to consumers throughout the State of California.

17 4. Detectable levels of TDCPP are commonly found in and on the foam padding of
18 upholstered stools that defendants import, manufacture, distribute for sale, ship for sale, sell and/or
19 offer for sale to consumers and other individuals throughout the State of California.

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

25 6. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a chemical
26 that is known to cause birth defects or other reproductive harm. DEHP became subject to the “clear
27 and reasonable warning” requirements of the act one year later on October 24, 2004. Cal. Code
28 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

1 7. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a
2 chemical that is known to cause cancer. TDCPP became subject to the “clear and reasonable
3 warning” requirements of the act one year later on October 28, 2012. Cal. Code Regs. tit. 27, §
4 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

5 8. Defendants manufacture, distribute, import, sell, and/or offer for sale without a
6 warning in California certain products containing the LISTED CHEMICALS as follows:

7 a. Defendant Tractor Supply Company (“TRACTOR SUPPLY”) manufactures,
8 distributes, imports, sells, and offers for sale without a warning in California:

9 i. tape measures with vinyl/PVC hand straps containing DEHP, including, but

10 not limited to, the *Tape Measure Set*, #1024425, UPC #7 49394 02963 0;

11 ii. spring clamps with vinyl/PVC grips containing DEHP, including, but not

12 limited to, the *Larin 2” Spring Clamp*, #3843538, *SPRC-2*, UPC #0 08435

13 *12673 9*;

14 iii. tools with vinyl/PVC grips containing DEHP, including, but not limited to,

15 the *3 Piece Pliers Set*, #1044705, UPC #7 49394 04147 2, and the *Schrade*

16 *Tough Tool*, *SCPROM-13-17CP-TSC*, UPC #0 44356 21771 2; and

17 iv. upholstered stools with foam padding containing TDCPP, including, but not

18 limited to, the *International Harvester Farmall Garage Stool*, Item#

19 *004773*, UPC #0 81134 44773 2 .

20 b. Defendant Larin Corp. (“LARIN”) manufactures, distributes, imports, and/or
21 offers for sale spring clamps with vinyl/PVC grips containing DEHP, including, but not
22 limited to, the *Larin 2” Spring Clamp*, #3843538, *SPRC-2*, UPC #0 08435 12673 9;

23 c. Defendant TAYLOR BRANDS, LLC manufactures, distributes, imports,
24 and/or offers for sale tools with vinyl/PVC grips containing DEHP, including, but not limited
25 to, *Schrade Tough Tool*, *SCPROM-13-17CP-TSC*, UPC #0 44356 21771 2; and

26 d. Defendant PLASTICOLOR MOLDED PRODUCTS, INC. manufactures,
27 distributes, imports, and/or offers for upholstered stools with foam padding containing
28

1 TDCPP, including, but not limited to, the *International Harvester Farmall Garage Stool*,
2 *Item# 004773, UPC #0 81134 44773 2*.

3 9. All such tape measures with vinyl/PVC hand straps containing DEHP, spring clamps
4 with vinyl/PVC grips containing DEHP, tools with vinyl/PVC grips containing DEHP, and stools
5 with foam padding containing TDCPP identified in Paragraphs 8(a) and 8(b), above, are referred to
6 collectively as the "PRODUCTS." As to each specific defendant named above, however,
7 PRODUCTS shall only refer only to the product and/or category of products as alleged on Plaintiffs'
8 60-day notices of violation of Proposition 65, and listed in Paragraphs 8(a) and 8(d) above.

9 10. Defendants' failure to warn workers, consumers and other individuals in California of
10 the harms associated with exposures to the LISTED CHEMICALS in conjunction with defendants'
11 sales of the PRODUCTS containing the LISTED CHEMICALS are violations of Proposition 65, and
12 subject defendants to enjoinder of such conduct, as well as civil penalties for each violation.
13 Health & Safety Code § 25249.7(a) & (b)(1).

14 11. For defendants' violations of Proposition 65, Plaintiffs seek preliminary and
15 permanent injunctive relief to compel defendants to provide purchasers or users of their
16 PRODUCTS with the required warning regarding the health hazards associated with exposures to
17 the LISTED CHEMICALS. Health & Safety Code § 25249.7(a).

18 12. Pursuant to Health and Safety Code section 25249.7(b), Plaintiffs also seek civil
19 penalties against defendants, and each of them, for each violation of Proposition 65.

20 **PARTIES**

21 13. Plaintiff WHITNEY R. LEEMAN is a citizen of the State of California who is
22 dedicated to protecting the health of California citizens through the elimination or reduction of
23 harmful exposures to toxic chemicals from consumer products. She brings this action in the public
24 interest pursuant to Health and Safety Code section 25249.7(d).

25 14. Plaintiff PAUL WOZNIAK is a citizen of the State of California who is dedicated to
26 protecting the health of California citizens through the elimination or reduction of harmful exposures
27 to toxic chemicals from consumer products. He brings this action in the public interest pursuant to
28 Health and Safety Code section 25249.7(d).

1 15. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is
2 dedicated to protecting the health of California citizens through the elimination or reduction of
3 harmful exposures to toxic chemicals from consumer products. He brings this action in the public
4 interest pursuant to Health and Safety Code section 25249.7(d).

5 16. Defendant TRACTOR SUPPLY is a person in the course of doing business within the
6 meaning of Health and Safety Code sections 25249.6 and 25249.11.

7 17. TRACTOR SUPPLY manufactures, imports, distributes, sells, and/or offers the
8 PRODUCTS for sale or use in California, or it implies by its conduct that it manufactures, imports,
9 distributes, sells, and/or offers the PRODUCTS for sale or use in California.

10 18. Defendant LARIN is a person in the course of doing business within the meaning of
11 Health and Safety Code sections 25249.6 and 25249.11.

12 19. LARIN manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale
13 or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or
14 offers the PRODUCTS for sale or use in California.

15 20. Defendant TAYLOR is a person in the course of doing business within the meaning of
16 Health and Safety Code sections 25249.6 and 25249.11.

17 21. TAYLOR manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
18 sale or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells,
19 and/or offers the PRODUCTS for sale or use in California.

20 22. Defendant PLASTICOLOR is a person in the course of doing business within the
21 meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

26 24. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person in
27 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
28 25249.11.

1 Plaintiffs seek civil penalties against DEFENDANTS, because one or more instances of wrongful
2 conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted,
3 and continue to conduct, business in Alameda County with respect to their PRODUCTS.

4 33. The California Superior Court has jurisdiction over this action pursuant to California
5 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all
6 causes except those given by statute to other trial courts.” The statute under which this action is
7 brought does not specify any other basis of subject matter jurisdiction.

8 34. The California Superior Court has jurisdiction over DEFENDANTS based on
9 Plaintiffs’ information and good faith beliefs that each defendant is a person, firm, corporation or
10 association that is a citizen of the State of California, has sufficient minimum contacts in the State of
11 California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’
12 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
13 with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 35. Plaintiffs reallege and incorporate by reference as if fully set forth herein, Paragraphs 1
17 through 34, inclusive.

18 36. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
19 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed
20 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

25 38. On November 15, 2013, plaintiff WHITNEY R. LEEMAN served a sixty-day notice
26 of violation, together with the requisite certificate of merit, to TRACTOR SUPPLY COMPANY, the
27 California Attorney General and other requisite public enforcement agencies stating that, as a result
28 of DEFENDANTS’ sales of the PRODUCTS containing DEHP, consumers, and other individuals in

1 the State of California are being exposed to DEHP resulting from their reasonably foreseeable use of
2 the PRODUCTS, without the individual purchasers and users first having received a “clear and
3 reasonable warning” regarding the health hazards associated with such toxic exposures, as required
4 by Proposition 65.

5 39. On February 7, 2014, plaintiff PAUL WOZNIAK served a sixty-day notice of
6 violation, together with the requisite certificate of merit, on LARIN CORP., TRACTOR SUPPLY,
7 the California Attorney General and other requisite public enforcement agencies stating that, as a
8 result of DEFENDANTS’ sales of the PRODUCTS containing DEHP, consumers, and other
9 individuals in the State of California are being exposed to DEHP resulting from their reasonably
10 foreseeable use of the PRODUCTS, without the individual purchasers and users first having received
11 a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

12 40. On April 16, 2014, plaintiff WHITNEY R. LEEMAN served a sixty-day notice of
13 violation, together with the requisite certificate of merit, to TRACTOR SUPPLY COMPANY, the
14 California Attorney General and other requisite public enforcement agencies stating that, as a result
15 of DEFENDANTS’ sales of the PRODUCTS containing DEHP, consumers, and other individuals in
16 the State of California are being exposed to DEHP resulting from their reasonably foreseeable use of
17 the PRODUCTS, without the individual purchasers and users first having received a “clear and
18 reasonable warning” regarding the health hazards associated with such toxic exposures, as required
19 by Proposition 65.

20 41. On July 11, 2014, plaintiff LAURENCE VINOCUR served a sixty-day notice of
21 violation together with the requisite certificates of merit, on TRACTOR SUPPLY, PLASTICOLOR,
22 the California Attorney General and other requisite public enforcement agencies stating that, as a
23 result of DEFENDANTS’ sales of the PRODUCTS containing TDCPP, workers, consumers, and
24 other individuals in the State of California are being exposed to the TDCPP resulting from their
25 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
26 having received a “clear and reasonable warning” regarding such toxic exposures, as required by
27 Proposition 65.

1 42. On July 11, 2014, plaintiff LAURENCE VINOCUR served a sixty-day notice of
2 violation together with the requisite certificates of merit, on TRACTOR SUPPLY, TAYLOR, the
3 California Attorney General and other requisite public enforcement agencies stating that, as a result
4 of DEFENDANTS’ sales of the PRODUCTS containing DEHP, consumers, and other individuals in
5 the State of California are being exposed to DEHP resulting from their reasonably foreseeable use of
6 the PRODUCTS, without the individual purchasers and users first having received a “clear and
7 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

8 43. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and
9 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6,
10 and DEFENDANTS’ violations have continued to occur beyond their receipt of Plaintiffs’ sixty-day
11 notices of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
12 will continue to occur in the future.

13 44. After receiving Plaintiffs’ sixty-day notices of violation the respective sixty-day notice
14 period as to each of Plaintiffs’ notices concluded without any of the appropriate public enforcement
15 agencies having elected to commence and diligently prosecute a cause of action against any of the
16 DEFENDANTS under Proposition 65.

17 45. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or use
18 in California by DEFENDANTS contain the LISTED CHEMICALS in such a way that the
19 reasonably foreseeable uses of these products result in exposures that require a “clear and
20 reasonable” warning under Proposition 65.

21 46. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
22 import, distribute, sell, and offer for sale or use in California contain DEHP and/or TDCPP.

23 47. DEHP and/or TDCPP are/is present in or on the PRODUCTS in such a way as to
24 expose individuals through dermal contact and/or ingestion during and after their reasonably
25 foreseeable use.

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

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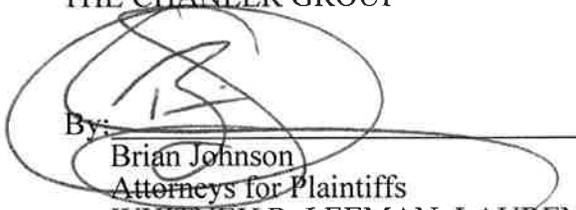
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin each of the DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by title 27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

3. That the Court grant Plaintiffs their reasonable attorneys’ fees and costs; and

4. That the Court grant such other and further relief as may be just and proper.

Dated: September 24, 2014

Respectfully Submitted,
THE CHANLER GROUP



By: Brian Johnson
Attorneys for Plaintiffs
WHITNEY R. LEEMAN, LAURENCE
VINOCUR, and PAUL WOZNIAK