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ENDORSED
FILED
ALAMEDA COUNTY

OCT 30 2014

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

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

ANTHONY E. HELD, PH.D., P.E.,

Plaintiff,

v.

CALLAWAY GOLF COMPANY; and
DOES 1-150, inclusive,

Defendants.

Case No. RG 14746312

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

By Fax

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E. (“HELD”) in the public interest of the citizens of the State of California to
4 enforce the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate
5 (“DEHP”), a toxic chemical found in vinyl/PVC golf club covers sold in California.

6 2. By this Complaint, plaintiff HELD seeks to remedy defendants’ continuing
7 failures to warn California citizens about the risks of exposures to DEHP present in and on the
8 vinyl/PVC golf club covers manufactured, distributed, sold, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of DEHP are found in and on vinyl/PVC golf club covers that
11 defendants manufacture, distribute, sell, and offer for sale to consumers, throughout the State of
12 California. Individuals in California are exposed to DEHP in the vinyl/PVC golf club covers
13 through various routes of exposure: (i) through dermal exposure when DEHP from the
14 vinyl/PVC golf club covers accumulates in ambient particles that are subsequently touched by
15 such individuals; and (ii) through ingestion when such particles are brought into contact with
16 the mouth.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
24 subject to the “clear and reasonable warning” requirements one year later on October 24, 2004.
25 (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

26 6. Defendant CALLAWAY GOLF COMPANY manufactures, distributes, imports,
27 sells, and/or offers for sale in California vinyl/PVC golf club covers containing DEHP
28

1 including, but not limited to, the *Odyssey Mallet Putter Cover, Item #5509006, UPC #6 42331*
2 *90380* 5. All such vinyl/PVC golf club covers are hereinafter collectively referred to as
3 "PRODUCTS."

4 7. Although defendants expose individuals to DEHP in the PRODUCTS, defendants
5 provide no warnings about the birth defect and other reproductive hazards associated with these
6 DEHP exposures. Defendants' failures to warn consumers and other individuals in the State of
7 California not covered by California's Occupational Health Act, Labor Code § 6300 et seq.
8 about their exposures to DEHP in conjunction with defendants' sales of the PRODUCTS, is a
9 violation of Proposition 65, and subjects defendants to enjoinder of such conduct as well as
10 civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

11 8. As a result of defendants' violations of Proposition 65, HELD seeks preliminary
12 and permanent injunctive relief to compel defendants to provide purchasers or users of the
13 PRODUCTS with the required warning regarding the health hazards of DEHP in the
14 PRODUCTS. (Health & Safety Code § 25249.7(a).)

15 9. Pursuant to Health and Safety Code Section 25249.7(b), HELD also seeks civil
16 penalties against defendants for their violations of Proposition 65.

17 PARTIES

18 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
19 who is dedicated to protecting the health of California citizens through the elimination or
20 reduction of toxic exposures from consumer products; and he brings this action in the public
21 interest pursuant to Health and Safety Code Section 25249.7(d).

22 11. Defendant CALLAWAY GOLF COMPANY ("CALLAWAY") is a person in the
23 course of doing business within the meaning of Health and Safety Code Section 25249.11.

24 12. CALLAWAY manufactures, imports, distributes, sells, and/or offers the
25 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
26 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
27 State of California.

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1 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

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

8 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
9 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
10 and 25249.11.

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

14 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

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

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

25 20. CALLAWAY and defendants DOES 1-150 are collectively referred to herein as
26 “Defendants.”
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1 26. Proposition 65 states, “[n]o person in the course of doing business shall
2 knowingly and intentionally expose any individual to a chemical known to the state to cause
3 cancer or reproductive toxicity without first giving clear and reasonable warning to such
4 individual . . .” (Health & Safety Code § 25249.6.)

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

12 28. Defendants have engaged in the manufacture, importation, distribution, sale, and
13 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 HELD’s
15 sixty-day notice of violation. As such, Defendants’ violations are ongoing and continuous in
16 nature, and will continue to occur in the future.

17 29. After receiving HELD’s sixty-day notice 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 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
21 or use in California by Defendants contain DEHP such that they require a “clear and
22 reasonable” warning under Proposition 65.

23 31. Defendants knew or should have known that the PRODUCTS they manufacture,
24 import, distribute, sell, and offer for sale or use in California contain DEHP.

25 32. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
26 to DEHP through dermal contact, and/or ingestion during reasonably foreseeable uses of the
27 PRODUCTS.

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1 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer products exposures and occupational exposures to DEHP, as such
3 exposures are defined by Title 27 of the California Code of Regulations, section 25602(b).

4 34. Defendants had knowledge that the normal and reasonably foreseeable uses of the
5 PRODUCTS expose individuals to DEHP through dermal contact and/or ingestion.

6 35. Defendants intended that such exposures to DEHP from the reasonably
7 foreseeable uses of the PRODUCTS would occur by Defendants' deliberate, non-accidental
8 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
9 for sale or use to individuals in the State of California.

10 36. Defendants failed to provide a "clear and reasonable warning" to those consumers
11 and other individuals in the State of California who were or who would become exposed to
12 DEHP through dermal contact and/or ingestion during the reasonably foreseeable uses of the
13 PRODUCTS.

14 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
15 directly by California voters, individuals exposed to DEHP through dermal contact and/or
16 ingestion, resulting from the reasonably foreseeable uses of the PRODUCTS sold by
17 Defendants without a "clear and reasonable warning," have suffered, and continue to suffer,
18 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

19 38. Pursuant to Health and Safety Code Section 25249.7(b), as a consequence of the
20 above-described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day for
21 each violation.

22 39. As a consequence of the above-described acts, Health and Safety Code
23 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
24 Defendants.

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PRAYER FOR RELIEF

Wherefore, HELD prays for judgment against Defendants, and each of them, as follows:

1. That the Court, pursuant to Health and Safety Code Section 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 Health and Safety Code Section 25249.7(a), preliminarily and permanently enjoin 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 DEHP;
3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating that Defendants recall all PRODUCTS currently in the chain of commerce in California without a "clear and reasonable warning" as defined by California Code of Regulations title 27, § 25601 *et seq.*
4. That the Court grant HELD his reasonable attorneys' fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: October 30, 2014

THE CHANLER GROUP

By: 

Troy C. Bailey
Attorney for Plaintiff
ANTHONY E. HELD, PH.D., P.E.