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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

20 MARK MOORBERG,
21 Plaintiff,
22 v.
23 THE HARTZ GROUP, INC; THE
24 HARTZ MOUNTAIN CORPORATION
25 and DOES 1 -100, inclusive,
26 Defendants.

Case No. **CGC - 14 - 543116**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

**ENDORSED
FILED**
Superior Court of California
County of San Francisco

DEC 09 2014

CLERK OF THE COURT
BY: MARY A. MORAN
Deputy Clerk

BY FAX

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff MARK MOORBERG ("Plaintiff") in the public interest of the citizens of the State of California to enforce the citizens' right to be informed of the presence of Di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl/PVC pet tie-out cables sold in California. DEHP is a toxic chemical used to treat vinyl/PVC, which is used in a variety of products.

1 2. By this Complaint, Plaintiff seeks to remedy Defendants' continuing failures to
2 warn California citizens about the risk of exposure to DEHP present in and on vinyl/PVC pet
3 tie-out cables manufactured, distributed, and offered for sale or use to consumers throughout
4 the State of California.

5 3. Detectable levels of DEHP are commonly found in and on vinyl/PVC pet tie-out
6 cables that Defendants manufacture, distribute, and offer for sale to consumers throughout the
7 State of California. Individuals in California, including infants and children, are exposed to
8 DEHP in the products through various routes of exposure: (i) through inhalation when DEHP
9 is released from vinyl/PVC pet tie-out cables; (ii) through dermal exposure when DEHP from
10 vinyl/PVC pet tie-out cables accumulate in ambient particles that are subsequently touched by
11 such individuals; and (iii) through ingestion when such particles are brought into contact with
12 the mouth.

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
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to 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 cancer. DEHP became subject to the "clear and
20 reasonable warning" requirements of the Act one year later on October 24, 2004. Cal. Code
21 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. DEHP is hereinafter referred to as the "Listed Chemical."

23 7. Defendant The Hartz Group, INC. ("Hartz Group") manufactures, distributes,
24 imports, sells and/or offers for sale in California vinyl/PVC pet tie-out cables containing DEHP
25 without a warning including, but not limited to, Hartz Living Tie-Out Cables, #503506, UPC #0
26 32700 91547 6.

27 8. Defendant The Hartz Mountain Corporation ("Hartz Mountain") manufactures,
28 distributes, imports, sells and/or offers for sale in California vinyl/PVC Pet Tie-Out Cables

1 containing DEHP without a warning including, but not limited to, Hartz Living Tie-Out Cables,
2 #503506, UPC #0 32700 91547 6.

3 9. All products containing the Listed Chemicals as listed in paragraph 7 through 8
4 above shall hereinafter be referred to as the "Products."

5 10. Although Defendants expose infants, children, and other people to the Listed
6 Chemicals in the Products, Defendants provide no warnings about the carcinogenic hazards
7 associated with exposures to the Listed Chemicals. Defendants' failures to warn consumers
8 and other individuals and workers (specifically those not subject to California's Occupational
9 Health Act, Labor Code section 6300 et seq. or exempted under the out-of-state manufacturer
10 rule) in the State of California about their exposures to the Listed Chemicals in conjunction
11 with Defendants' sales of the Products, is a violation of Proposition 65, and subjects
12 Defendants to enjoinder of such conduct as well as civil penalties for each violation. Health
13 & Safety Code § 25249.7(a) & (b)(1).

14 11. As a result of Defendants' violations of Proposition 65, Plaintiff seeks
15 preliminary and permanent injunctive relief to compel Defendants to provide purchasers or
16 users of the Products with the required warning regarding the health hazards of the Listed
17 Chemical in the Products. Health & Safety Code § 25249.7(a).

18 12. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil
19 penalties against Defendants for their violations of Proposition 65.

20
21 **PARTIES**

22 13. Plaintiff Mark Moorberg ("Plaintiff") is a citizen of the State of California who is
23 dedicated to protecting the health of California citizens through the elimination or reduction of
24 toxic exposures from consumer products, and he brings this action in the public interest
25 pursuant to Health and Safety Code section 25249.7(d).

26 14. Defendant Hartz Group is a person in the course of doing business within the
27 meaning of Health and Safety Code sections 25249.6 and 25249.11.

1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

3 22. The California Superior Court has jurisdiction over Defendants based on
4 Plaintiff’s information and good faith belief that each of the Defendants 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, and/or otherwise purposefully avails itself of the California
7 market. Defendants’ purposeful availment of California as a marketplace for the Products
8 renders the exercise of personal jurisdiction by California courts over Defendants consistent
9 with traditional notions of fair play and substantial justice.

10 **FIRST CAUSE OF ACTION**

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

12 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
13 Paragraphs 1 through 22, inclusive.

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

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

22 26. On May 21, 2014, Plaintiff’s sixty-day notice of violation, together with the
23 requisite certificate of merit, was provided to Hartz Group, Hartz Mountain and certain public
24 enforcement agencies stating that, as a result of Defendants’ sales of the Products containing
25 DEHP, purchasers and users in the State of California were being exposed to DEHP resulting
26 from their reasonably foreseeable use of the Products, without the individual purchasers and
27 users first having been provided with a “clear and reasonable warning” regarding such toxic
28 exposures, as required by Proposition 65.

1 27. Defendants have engaged in the manufacture, importation, distribution, sale, and
2 offering of the Products for sale or use in violation of Health and Safety Code section 25249.6,
3 and Defendants' violations have continued to occur beyond their receipt of Plaintiff's sixty-day
4 notice of violation. As such, Defendants' violations are ongoing and continuous in nature, and
5 will continue to occur in the future.

6 28. After receiving Plaintiff's sixty-day notice of violation, the appropriate public
7 enforcement agencies have failed to commence and diligently prosecute a cause of action
8 against Defendants under Proposition 65.

9 29. The Products manufactured, imported, distributed, sold, and offered for sale or
10 use in California by Defendants contain the Listed Chemical such that they require a "clear and
11 reasonable" warning under Proposition 65.

12 30. Defendants knew or should have known that the Products they manufacture,
13 import, distribute, sell, and offer for sale or use in California contain the Listed Chemical.

14 31. The Listed Chemical is present in or on the Products in such a way as to expose
15 individuals to the Listed Chemical through dermal contact, ingestion, and/or inhalation during
16 reasonably foreseeable use of the Products including through workplace exposure to the
17 Products.

18 32. The normal and reasonably foreseeable uses of the Products have caused, and
19 continue to cause, consumer exposures to the Listed Chemical, as such exposures are defined
20 by the California Code of Regulations Title 27, section 25602(b).

21 33. Defendants had knowledge that the normal and reasonably foreseeable uses of
22 the Products expose individuals to the Listed Chemical through dermal contact, ingestion,
23 and/or inhalation.

24 34. Defendants intended that such exposures to the Listed Chemical from the
25 reasonably foreseeable uses of the Products would occur by Defendants' deliberate, non-
26 accidental participation in the manufacture, importation, distribution, sale, and offering of the
27 Products for sale or use to individuals in the State of California.

1 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
2 preliminary and permanent injunctions mandating that Defendants recall all Products currently
3 in the chain of commerce in California without a “clear and reasonable warning” as defined by
4 California Code of Regulations title 27, section 25601 *et seq.*;

5 4. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

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

7
8 Dated: December 9, 2014

Respectfully Submitted,

MOSCONE EMBLIDGE SATER & OTIS LLP

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11 By:  _____
12 Jordan M. Otis
13 Attorneys for Plaintiff MARK MOORBERG