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ENDORSED  
FILED  
ALAMEDA COUNTY

FEB -2 2015

CLERK OF THE SUPERIOR COURT  
By \_\_\_\_\_ Deputy  
Maria Carrera

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

RG15756965

DR. WHITNEY R. LEEMAN,  
  
Plaintiff.  
  
v.  
  
JT INTERNATIONAL DISTRIBUTORS, INC.  
and DOES 1-150, inclusive,  
  
Defendants.

Case No. \_\_\_\_\_  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
  
(Cal. 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 tool grips sold in the State of California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about reproductive toxicity associated with their exposure to DEHP  
8 present in or on tool grips that defendants manufacture, import, distribute, sell and/or offer for  
9 sale to consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on tool grips that defendants  
11 manufacture, import, distribute, sell and/or offer for sale to consumers throughout the State of  
12 California.

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

18 5. On October 24, 2003, California identified and listed DEHP as a chemical known  
19 to cause birth defects and other reproductive harm. DEHP became subject to the warning  
20 requirement one year later and was therefore subject to the “clear and reasonable warning”  
21 requirements of Proposition 65 beginning on October 24, 2004. (27 CCR § 27001 (e); *Cal.*  
22 *Health & Safety Code* § 25249.8.) DEHP is hereinafter referred to as the (“LISTED  
23 CHEMICAL”).

24 6. Defendants manufacture, import, distribute, sell and/or offer for sale tool grips  
25 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *Tough*  
26 *1 Rotary Leather Punch, Item No. 76-1515, UPC# 6 88499 15257 0*. All such tool grips  
27 containing the LISTED CHEMICAL shall hereinafter be referred to as the (“PRODUCTS”).  
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1           13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
2 persons in the course of doing business within the meaning of California Health & Safety Code  
3 § 25249.11(b).

4           14. MANUFACTURER DEFENDANTS engage in the process of researching,  
5 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
6 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
7 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

8           15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
9 in the course of doing business within the meaning of California Health & Safety Code §  
10 25249.11.

11           16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
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 persons in  
15 the course of doing business within the meaning of California Health & Safety Code §  
16 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 of Defendants DOES 1 through 150, inclusive, are  
20 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
21 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
22 each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
23 herein. When ascertained, their true names shall be reflected in an amended complaint.

24           20. JT INTERNATIONAL, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
26 referred to as (“DEFENDANTS”).  
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**VENUE AND JURISDICTION**

21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continue to occur, in the County of Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

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

23. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff’s information and good faith belief that each defendant is a person, firm, corporation, or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, or otherwise purposefully avails itself of the California market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

**FIRST CAUSE OF ACTION**

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

24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 23, inclusive.

25. The citizens of the State of California have expressly stated in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* that they must be informed “about exposures to chemicals that cause cancer, birth defects and other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual....” (*Ibid.*)

3 27. On or about July 30, 2014, a sixty-day notice of violation, together with the  
4 requisite certificate of merit required by Health & Safety Code § 25249.7 (d) (1), was served on  
5 JT INTERNATIONAL and various public enforcement agencies stating that, as a result of the  
6 DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of California were  
7 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable use of the  
8 PRODUCTS, without the individual purchasers and users first having been provided with a  
9 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

17 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
18 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
19 cause of action against DEFENDANTS under Proposition 65.

20 30. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for  
21 sale or use in California by DEFENDANTS contained the LISTED CHEMICAL in an amount  
22 above the allowable State limits.

23 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
24 imported, distributed, sold, and/or offered for sale or use in California contained the LISTED  
25 CHEMICAL.

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

4           33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
5 continues to cause, consumer and workplace exposures to the LISTED CHEMICAL, as such  
6 exposure is defined by Title 27 CCR § 25602(b).

7           34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
8 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
9 and/or ingestion.

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

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

18           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
19 directly by California voters, individuals exposed to the LISTED CHEMICAL 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           38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
24 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
25 Safety Code § 25249.7(b).

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