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ENDORSED
FILED
Superior Court of California
County of San Francisco
OCT 23 2014
CLERK OF THE COURT
BY: MARY A. MORAN
Deputy Clerk

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

CGC-14-542329

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
WEST COAST TRENDS, INC.; and DOES 1-
150, inclusive,
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 plaintiff WHITNEY R.
3 LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC golf club covers sold by
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn consumers, citizens, and other individuals in California about the risks of exposure to
9 DEHP which is present in vinyl/PVC golf club covers manufactured, distributed, and offered for
10 sale and use to consumers and other individuals throughout California.

11 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC golf
12 club covers that defendants manufacture, distribute, sell and offer for sale to consumers and
13 other individuals throughout 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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
20 chemical known to cause birth defects or other reproductive harm. DEHP became subject to the
21 “clear and reasonable warning” requirement of the act one year later on October 24, 2004. Cal.
22 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is
23 referred to hereinafter as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without
25 warning in California, vinyl/PVC golf club covers containing the LISTED CHEMICAL,
26 including, but not limited to, the *Club Glove USA Golf’s Best Wood Cover, Driver, WCDIS001*,
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1 (UPC #7 54921 11373 7). All such vinyl/PVC golf club covers containing DEHP are referred
2 to collectively hereinafter as the "PRODUCTS."

3 7. Defendants' failure to warn consumers, workers and other individuals in
4 California about the health hazards associated with exposures to the LISTED CHEMICAL, in
5 conjunction with defendants' sales of the PRODUCTS are violations of Proposition 65, and
6 subject defendants, and each of them, to enjoinder of such conduct as well as civil penalties
7 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants, and each of them, for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of toxic exposures from consumer products; she brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant WEST COAST TRENDS, INC. ("WEST COAST") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

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

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

1 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
2 and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco
3 with respect to the PRODUCTS.

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

8 23. The California Superior Court has jurisdiction over DEFENDANTS based on
9 plaintiff’s information and good faith belief 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
11 State of California, and/or otherwise purposefully avails itself of the California market.
12 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
13 California courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

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

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

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

26 27. On July 30, 2014, plaintiff served a sixty-day notice of violation, together with the
27 accompanying certificate of merit, on WEST COAST and the requisite public enforcement
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1 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
2 LISTED CHEMICAL, purchasers and users in the State of California are being exposed to the
3 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
4 without the individual purchasers and users first having been provided with a “clear and
5 reasonable warning” regarding the harms associated with such exposures, as required by
6 Proposition 65.

7 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
8 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
9 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
10 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, unless enjoined
11 will continue in the future.

12 29. After receiving plaintiff’s sixty-day notice of violation no public enforcement
13 agency has commenced and is diligently prosecuting a cause of action against DEFENDANTS
14 to enforce the alleged violations of Proposition 65 that are the subject of plaintiff’s notice of
15 violation.

16 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
17 offer for sale or use in California, cause exposures to the LISTED CHEMICAL as a result of the
18 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and
19 endured by consumers and other individuals in California are not exempt from the “clear and
20 reasonable” warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

21 31. DEFENDANTS have knowledge that the PRODUCTS they manufacture, import,
22 distribute, sell, and offer for sale in California contain the LISTED CHEMICAL.

23 32. The LISTED CHEMICAL is present on the PRODUCTS in such a way as to
24 expose individuals through dermal contact, inhalation, and/or ingestion during reasonably
25 foreseeable use.

1 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, consumer exposures to the LISTED CHEMICAL, as defined by title 27 of
3 the California Code of Regulations, section 25602(b).

4 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
5 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact,
6 and/or ingestion.

7 35. DEFENDANTS intend that exposures to the LISTED CHEMICAL from the
8 reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental
9 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
10 for sale or use to consumers and other individuals in California.

11 36. DEFENDANTS have failed to provide a “clear and reasonable warning” to those
12 consumers and other individuals in California who are or who will be exposed to the LISTED
13 CHEMICAL through dermal contact, and/or ingestion resulting from their reasonably
14 foreseeable uses of the PRODUCTS.

15 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
16 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
17 contact, inhalation, and/or ingestion as a result of their use of the PRODUCTS that
18 DEFENDANTS sell without a “clear and reasonable” health hazard warning, have suffered,
19 and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate
20 remedy at law.

21 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
22 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
23 for each violation which is each exposure resulting from a single, discreet unit sale of a
24 PRODUCT containing the LISTED CHEMICAL and sold without a warning by
25 DEFENDANTS.

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1 39. 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, plaintiff prays 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, and each of them, in the amount of \$2,500 per day for
8 each violation;


9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
11 offering the PRODUCTS for sale or use in California without first providing a “clear and
12 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
13 25601 *et seq.*, regarding the harms associated with exposures the LISTED CHEMICAL;

14 3. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

16 Dated: October 21, 2014

17 Respectfully Submitted,
18 THE CHANLER GROUP

19 
20 By: Brian C. Johnson
21 Attorneys for Plaintiff
22 WHITNEY R. LEEMAN, PH.D.