

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 03 2014

CLERK OF THE SUPERIOR COURT

By           Maria Carrera          

1 Josh Voorhees, State Bar No. 241436  
2 Troy C. Bailey, State Bar No. 277424  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 WHITNEY R. LEEMAN, PH.D.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION

RG 14746730

15 WHITNEY R. LEEMAN, PH.D.,

16 Plaintiff,

17 v.

18 THE DOLLFUS MIEG COMPANY, INC.;  
19 and DOES 1-150, inclusive,

20 Defendant.

) Case No. \_\_\_\_\_

) **COMPLAINT FOR CIVIL PENALTIES  
) AND INJUNCTIVE RELIEF**

) (Health & Safety Code § 25249.5 *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  
5 di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl/PVC bracelets, vinyl/PVC  
6 binder inserts and stitch bow rolls with vinyl/PVC components sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
8 warn California citizens and other individuals about the risks of exposure to DEHP present in  
9 and on vinyl/PVC bracelets, vinyl/PVC binder inserts and stitch bow rolls with vinyl/PVC  
10 components manufactured, distributed, and offered for sale or use to consumers and other  
11 individuals throughout the State of California.

12 3. Detectable levels of DEHP are found in and on the vinyl/PVC bracelets,  
13 vinyl/PVC binder inserts and stitch bow rolls with vinyl/PVC components that defendants  
14 manufacture, distribute, and offer for sale to consumers and other individuals throughout the  
15 State of California.

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

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

1           6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
2 hazard warnings in California, vinyl/PVC bracelets, vinyl/PVC binder inserts and stitch bow  
3 rolls with vinyl/PVC components.

4           7. An example of vinyl/PVC bracelets that defendants also manufacture, distribute,  
5 import, sell and/or offer for sale without health hazard warnings in California, is the *Prism*  
6 *AMP'D! Reflective Snap Bracelet, PRIAMPD, UPC #0 77540 38822 6*. An example of  
7 vinyl/PVC binder inserts that defendants also manufacture, sell and/or offer for sale without  
8 health hazard warnings in California is the *Creative World DMC Stitch Bow Mini Binder*  
9 *Inserts, Article No. U1335L, UPC #0 77540 91206 3*. An example of stitch bow rolls with  
10 vinyl/PVC components that defendants also manufacture, sell and/or offer for sale without  
11 health hazard warnings in California is the *Creative World DMC Stitch Bow Roll, Art. No.*  
12 *U1637, UPC #0 77540 19922 8*. All such vinyl/PVC bracelets, vinyl/PVC binder inserts and  
13 stitch bow rolls with vinyl/PVC components are referred to collectively hereinafter as  
14 "PRODUCTS."

15           8. Defendants' failure to warn consumers and other individuals in the State of  
16 California of the health hazards associated with exposures to DEHP in conjunction with  
17 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,  
18 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.  
19 Health & Safety Code § 25249.7(a) & (b)(1).

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

24           10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
25 penalties against defendants for their violations of Proposition 65.

**PARTIES**

1  
2           11. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California  
3 who is dedicated to protecting the health of California citizens through the elimination or  
4 reduction of toxic exposures from consumer products; and she brings this action in the public  
5 interest pursuant to Health and Safety Code section 25249.7(d).

6           12. Defendant DOLLFUS MIEG COMPANY, INC.. ("DOLLFUS") is a person in  
7 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
8 and 25249.11.

9           13. DOLLFUS manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
10 for sale or use in the State of California, or imply by its conduct that it manufactures, imports,  
11 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

12           14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
13 person in the course of doing business within the meaning of Health and Safety Code sections  
14 25249.6 and 25249.11.

15           15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
16 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
17 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
18 California.

19           16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
20 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
21 and 25249.11.

22           17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
23 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
24 in the State of California.

25           18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
26 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
27 and 25249.11.

28



1 **FIRST CAUSE OF ACTION**

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

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

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

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

13 28. On August 28, 2014, plaintiff served a supplemental sixty-day notice of violation,  
14 together with the requisite certificate of merit, on DOLLFUS and certain public enforcement  
15 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
16 DEHP, purchasers and users in the State of California were being exposed to DEHP resulting  
17 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and  
18 users first having been provided with a “clear and reasonable warning” regarding the harms  
19 associated with such exposures, as required by Proposition 65.

20 29. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
23 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in  
24 the future.

25 30. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate  
26 public enforcement agencies have commenced and diligently prosecuted a cause of action  
27  
28

1 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the  
2 subject of plaintiff's notice of violation.

3 31. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
6 consumers and other individuals in California are not exempt from the "clear and reasonable"  
7 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

8 32. DEFENDANTS knew or should have known that the PRODUCTS they  
9 manufactured, imported, distributed, sold, and offered for sale or use in California contained  
10 DEHP.

11 33. DEHP is present in or on the PRODUCTS in such a way as to expose individuals  
12 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

13 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
14 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
15 of Regulations, section 25602(b).

16 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

18 36. DEFENDANTS intended that exposures to DEHP from the reasonably  
19 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
20 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or  
21 use to consumers and other individuals in California.

22 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
23 consumers and other individuals in California who were or who would become exposed to  
24 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

25 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
26 directly by California voters, individuals exposed to DEHP through dermal contact and/or  
27 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear  
28

1 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
2 for which they have no plain, speedy, or adequate remedy at law.

3 39. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
4 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
5 for each violation.

6 40. As a consequence of the above-described acts, Health and Safety Code  
7 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

11 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
12 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
13 each violation;

14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
16 offering the PRODUCTS for sale or use in California without first providing a “clear and  
17 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
18 25601 *et seq.*, regarding the harms associated with exposures DEHP;

19 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
20 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
21 currently in the chain of commerce in California without a “clear and reasonable warning” as  
22 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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


24 5. That the Court grant such other and further relief as may be just and proper.  
25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: November 3, 2014

Respectfully Submitted,  
THE CHANLER GROUP

By:   
\_\_\_\_\_  
Troy C. Bailey  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN, PH.D.