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

14 ANTHONY E. HELD, PhD., P.E.,
15 Plaintiff,

16 v.

17 PACIFIC TRADE INTERNATIONAL,
18 INC.; TARGET CORPORATION; and
DOES 1 -20, inclusive,
19 Defendants.

Case No. ~~C GC - 14 - 538674~~

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

20 DEMAND FOR JURY TRIAL

BY FAX

21 NATURE OF THE ACTION

22 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
23 HELD, PhD., P.E. ("PLAINTIFF") in the public interest of the citizens of the State of
24 California to enforce the People's right to be informed of the presence of lead, a toxic chemical
25 found in reed diffusers sold in California.

26 2. By this Complaint, PLAINTIFF seeks to remedy Defendants' continuing failures
27 to warn California citizens about the risk of exposure to lead present in and on reed diffusers
28

1 manufactured, distributed, and offered for sale or use to consumers throughout the State of
2 California.

3 3. Detectable levels of lead are commonly found on the reed diffusers that
4 Defendants manufacture, distribute, and offer for sale to consumers throughout the State of
5 California.

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

11 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
12 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
13 subject to the “clear and reasonable warning” requirements of the Act one year later on
14 February 27, 1988. California Code of Regulations Title 27, § 27001(c); Health & Safety
15 Code § 25249.8.

16 6. Defendant PACIFIC TRADE INTERNATIONAL, INC. (“PACIFIC TRADE”) manufactures, distributes, imports, sells and/or offers for sale in California, reed diffusers
17 containing lead without a warning including, but not limited to, Pure and Natural Lemongrass
18 Eucalyptus Reed Diffuser, #054 09 1965, UPC #7 54870 52452 3.

19 7. Defendant TARGET CORPORATION (“TARGET”) manufactures, distributes, imports, sells and/or offers for sale in California, reed diffusers containing lead without a warning
20 including, but not limited to, Pure and Natural Lemongrass Eucalyptus Reed Diffuser, #054 09
21 1965, UPC #7 54870 52452 3.

22 8. Lead is hereinafter referred to as the “LISTED CHEMICAL.”

23 9. All products containing the LISTED CHEMICAL, as listed in paragraphs 6 and
24 7 above, shall hereinafter be referred to as the “PRODUCTS.”

25 10. Although Defendants expose infants, children, and other people to the LISTED
26 CHEMICAL in the PRODUCTS, Defendants provide no warnings about the hazards

1 associated with exposures to the LISTED CHEMICAL. Defendants' failures to warn
2 consumers and other individuals and workers (specifically those not subject to California's
3 Occupational Health Act, Labor Code section 6300 et seq. or exempted under the out-of-state
4 manufacturer rule) in the State of California about their exposures to the LISTED CHEMICAL
5 in conjunction with Defendants' sales of the PRODUCTS, is a violation of Proposition 65, and
6 subject Defendants to enjoinder of such conduct as well as civil penalties for each violation.
7 Health & Safety Code §§ 25249.7(a) & (b)(1).

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

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

14 **PARTIES**

15 13. Plaintiff ANTHONY E. HELD, PhD., P.E., 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; and he brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 14. Defendant PACIFIC TRADE INTERNATIONAL, INC. is a person in the course
20 of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

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

26 16. Defendant TARGET CORPORATION is a person in the course of doing business
27 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

1 contacts in the State of California, and/or otherwise purposefully avails itself of the California
2 market. DEFENDANTS' purposeful availment of California as a marketplace for the
3 PRODUCTS renders the exercise of personal jurisdiction by California courts over
4 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 23. PLAINTIFF re-alleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 22, inclusive.

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

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

17 26. On October 25, 2013, PLAINTIFF's sixty-day notice of violation, together with
18 the requisite certificate of merit, was provided to PACIFIC TRADE and TARGET and certain
19 public enforcement agencies stating that, as a result of DEFENDANTS' sales of the
20 PRODUCTS containing lead, purchasers and users in the State of California were being
21 exposed to lead resulting from their reasonably foreseeable use of the PRODUCTS, without
22 the individual purchasers and users first having been provided with a "clear and reasonable
23 warning" regarding such toxic exposures, as required by Proposition 65.

24 27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
25 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
26 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
27 PLAINTIFF'S sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing
28 and continuous in nature, and will continue to occur in the future.

1 28. After receiving PLAINTIFF’S sixty-day notice of violation, the appropriate
2 public enforcement agencies have failed to commence and diligently prosecute a cause of
3 action against DEFENDANTS under Proposition 65.

4 29. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
5 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they
6 require a “clear and reasonable” warning under Proposition 65.

7 30. DEFENDANTS knew or should have known that the PRODUCTS they
8 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
9 CHEMICAL.

10 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as
11 to expose individuals to the LISTED CHEMICAL through dermal contact, and/or ingestion
12 during reasonably foreseeable use of the PRODUCTS including through workplace exposure
13 to the PRODUCTS.

14 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused,
15 and continue to cause, consumer products exposures to the LISTED CHEMICAL, as such
16 exposures are defined by the California Code of Regulations Title 27, section 25602(b).

17 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
18 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact,
19 and/or ingestion.

20 34. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
21 the reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS’
22 deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and
23 offering of the PRODUCTS for sale or use to individuals in the State of California.

24 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those
25 consumers and other individuals in the State of California who were or who would become
26 exposed to the LISTED CHEMICAL through dermal contact, and/or ingestion during the
27 reasonably foreseeable uses of the PRODUCTS including through workplace exposure to the
28 PRODUCTS.

1 36. Contrary to the express policy and statutory prohibition of Proposition 65
2 enacted directly by California voters, individuals exposed to the LISTED CHEMICAL through
3 dermal contact, and/or ingestion resulting from the reasonably foreseeable uses of the
4 PRODUCTS including through workplace exposure to the PRODUCTS sold by
5 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
6 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

10 38. As a consequence of the above-described acts, Health and Safety Code
11 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
12 DEFENDANTS.

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14 **PRAYER FOR RELIEF**

15 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, and each of them,
16 as follows:

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

19 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
21 offering the PRODUCTS for sale or use in California without first providing a “clear and
22 reasonable warning” as defined by the California Code of Regulations title 27, section 25601 *et*
23 *seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

24 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
25 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
26 currently in the chain of commerce in California without a “clear and reasonable warning” as
27 defined by California Code of Regulations Title 27, section 25601 *et seq.*,
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1 4. That the Court grant PLAINTIFF his reasonable attorneys' fees and costs of suit;

2 and

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

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff hereby requests a jury trial.

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8 Dated: April 15, 2014

Respectfully Submitted,

MOSCONE EMBLIDGE SATER & OTIS LLP

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By: _____ 

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Jordan M. Otis
Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.

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