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ENDORSED
FILED
San Francisco County Superior Court

MAY 22 2014

CLERK OF THE COURT
BY: CAROLYN BALISTRERI
Deputy Clerk

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
19 DOES 1 -20, inclusive,

20 Defendants.

Case No. CGC-14-538674

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

DEMAND FOR JURY TRIAL

NATURE OF THE ACTION

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

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

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”)
17 manufactures, distributes, imports, sells and/or offers for sale in California, reed diffusers
18 containing lead without a warning including, but not limited to, Pure and Natural Lemongrass
19 Eucalyptus Reed Diffuser, #054 09 1965, UPC #7 54870 52452 3, and Pure and Natural Fig &
20 Redwood Reed Diffuser, #054 09 0770, UPC #7 54870 79179 6.

21 7. Defendant TARGET CORPORATION (“TARGET”) manufactures, distributes,
22 imports, sells and/or offers for sale in California, reed diffusers containing lead without a warning
23 including, but not limited to, Pure and Natural Lemongrass Eucalyptus Reed Diffuser, #054 09
24 1965, UPC #7 54870 52452 3, and Pure and Natural Fig & Redwood Reed Diffuser, #054 09
25 0770, UPC #7 54870 79179 6.

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

27 9. All products containing the LISTED CHEMICAL, as listed in paragraphs 6 and
28 7 above, shall hereinafter be referred to as the “PRODUCTS.”

1 PLAINTIFF'S information and good faith belief that each DEFENDANT is a person, firm,
2 corporation, or association that is a citizen of the State of California, has sufficient minimum
3 contacts in the State of California, and/or otherwise purposefully avails itself of the California
4 market. DEFENDANTS' purposeful availment of California as a marketplace for the
5 PRODUCTS renders the exercise of personal jurisdiction by California courts over
6 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

7 **FIRST CAUSE OF ACTION**

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

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

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

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

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

26 27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
27 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
28 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of

1 PLAINTIFF'S sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing
2 and continuous in nature, and will continue to occur in the future.

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

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

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

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

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

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

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

26 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and other individuals in the State of California who were or who would become
28 exposed to the LISTED CHEMICAL through dermal contact, and/or ingestion during the

1 reasonably foreseeable uses of the PRODUCTS including through workplace exposure to the
2 PRODUCTS.

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

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

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

15
16 **PRAYER FOR RELIEF**

17 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, and each of them,
18 as follows:

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

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

26 3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue
27 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
28

1 currently in the chain of commerce in California without a "clear and reasonable warning" as
2 defined by California Code of Regulations Title 27, section 25601 *et seq.*,

3 4. That the Court grant PLAINTIFF his reasonable attorneys' fees and costs of suit;
4 and

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

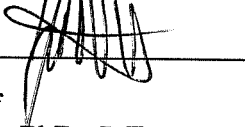
6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby requests a jury trial.

8
9
10 Dated: May 22, 2014

Respectfully Submitted,

11 MOSCONE EMBLIDGE SATER & OTIS LLP

12
13 By: 
14 Jordan M. Otis
15 Attorneys for Plaintiff
16 ANTHONY E. HELD, PhD., P.E.

1 **PROOF OF SERVICE**

2 San Francisco County Superior Court
3 Case No. CGC-14-538674

4 I, Anna L. Hill, declare as follows:

5 I am a citizen of the United States, over the age of eighteen years and not a party to the
6 within entitled action. On May 22, 2014, I served the attached:

- 7 • **First Amended Complaint for Civil Penalties and Injunctive Relief; Demand for
8 Jury Trial**

9 on the interested party(ies) named below:

10 Chris M. Amantea, Esq.
11 Squire Sanders (US) LLP
12 555 S. Flower Street, 31st Fl.
13 Los Angeles, CA 90071

14 Jeffrey Margulies, Esq.
15 Fulbright & Jaworski LLP
16 555 South Flower Street, 41st Fl.
17 Los Angeles, CA 90071

18 *Attorneys for defendant Pacific Trade
19 International, Inc.*

20 *Attorneys for defendant Target Corporation*

21 I served the attached document(s) in the manner indicated below:

22 **BY MAIL:** I caused true and correct copy(ies) of the above documents to be placed and sealed
23 in envelope(s) addressed to the addressee(s) named above and, following ordinary business
24 practices, placed said envelope(s) at the Law Offices of Moscone Emblidge Sater & Otis LLP,
25 220 Montgomery, Ste. 2100, San Francisco, California, 94104, for collection and mailing with
26 the United States Postal Service and there is delivery by the United States Post Office at said
27 address(es). In the ordinary course of business, correspondence placed for collection on a
28 particular day is deposited with the United States Postal Service that same day.

BY PERSONAL SERVICE: I caused true and correct copies of the above documents to
be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such
envelope(s) to be delivered by hand on the office(s) of the addressee(s).

BY FACSIMILE: I caused a copy(ies) of such document(s) to be transmitted via
facsimile machine. The fax number of the machine from which the document was
transmitted was (415) 362-2006. The fax number(s) of the machine(s) to which the
document(s) were transmitted are listed above. The fax transmission was reported as
complete and without error.

BY FEDERAL EXPRESS OVERNIGHT: I caused true and correct copies of the above
documents to be placed and sealed in envelope(s) addressed to the addressee(s) named
above and, following ordinary business practices, placed said envelope(s) at the Law Offices
of Moscone Emblidge Sater & Otis LLP, 220 Montgomery Street, Ste. 2100, San Francisco,
California, 94104, for collection and mailing with Federal Express. I am informed that there
is delivery service by Federal Express at the address(es) of the addressee(s) named above.
In the ordinary course of business, correspondence placed for collection on a particular day
is deposited with Federal Express that same day.

1 **BY ELECTRONIC MAIL:** I caused true and correct copies of the above documents to
2 be sent via e-mail to the e-mail addressee(s) named above. I did not receive, within a
3 reasonable amount of time after the transmission, any electronic message other
4 indication that the transmission was unsuccessful.

5 **BY CERTIFIED MAIL:** I caused true and correct copy(ies) of the above documents to be
6 placed and sealed in envelope(s), certified mail, return receipt requested, addressed to the
7 addressee(s) named above and, following ordinary business practices, placed said envelope(s) at
8 the Law Offices of Moscone Emblidge Sater & Otis LLP, 220 Montgomery, Ste. 2100, San
9 Francisco, California, 94104, for collection and mailing with the United States Postal Service and
10 there is delivery by the United States Post Office at said address(es). In the ordinary course of
11 business, correspondence placed for collection on a particular day is deposited with the United
12 States Postal Service that same day.

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I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed May 22, 2014, at San Francisco, California.



Anna L. Hill