

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

Josh Voorhees, State Bar No. 241436  
Kimberly Gates, State Bar No. 282369  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

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

**FILED**  
APR - 8 2015  
KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: R. Smith, Deputy

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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

OFFICE DEPOT, INC.; and DOES 1-150,  
inclusive,

Defendants.

Case No. CV 15 0 1 2 9 6

**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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic  
5 chemical that is found in the vinyl/PVC grips of tools sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risks of exposures to DEHP present in and on the vinyl/PVC  
8 grips of tools manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

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

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

18 5. On October 24, 2003, pursuant to Proposition 65, California identified and listed  
19 DEHP as a chemical known to cause birth defects or other reproductive harm. DEHP became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on October  
21 24, 2004. (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b).) DEHP is referred to hereinafter as the (“LISTED CHEMICAL”).

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
24 warning in California, tools with vinyl/PVC grips containing the LISTED CHEMICAL,  
25 including, but not limited to, the *31-Piece Precision Tool Set (Pliers), Item 707-442, UPC #7*  
26 *35854 86153 7*. All such tools with vinyl/PVC grips containing the LISTED CHEMICAL are  
27 referred to collectively hereinafter as the (“PRODUCTS”).  
28

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

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

10 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
11 penalties against defendants, and each of them, for each violation of Proposition 65.

#### **PARTIES**

12  
13 10. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California  
14 who is dedicated to protecting the health of California citizens through the elimination or  
15 reduction of harmful exposures to toxic chemicals from consumer products. She brings this  
16 action in the public interest pursuant to Health and Safety Code section 25249.7(d).

17 11. Defendant Office Depot, Inc. ("OFFICE DEPOT") is a person in the course of  
18 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

19 12. OFFICE DEPOT manufactures, imports, distributes, sells, and/or offers the  
20 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
21 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
22 State of California.

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

26 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
27 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
28

1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
5 and 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
8 in the State of California.

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
10 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
11 and 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

14 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
15 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
16 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
17 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
18 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. OFFICE DEPOT, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
20 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as  
21 “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in the Marin County, pursuant to Code of Civil Procedure  
24 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
25 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
26 wrongful conduct occurred, and continue to occur, in this county, and/or because  
27  
28

1 DEFENDANTS conducted, and continue to conduct, business in Marin County with respect to  
2 the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

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

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

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

25 27. On January 23, 2015, plaintiff served a sixty-day notice of violation and  
26 accompanying certificate of merit on OFFICE DEPOT, and the requisite public enforcement  
27 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
28

1 LISTED CHEMICAL, workers, consumers and other individuals in the State of California are  
2 being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of  
3 the PRODUCTS, without the individual purchasers and users first having received a “clear and  
4 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

5 28. DEFENDANTS engage in the manufacture, importation, distribution, sale, and  
6 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
7 25249.6, and DEFENDANTS’ violations continue to occur beyond their receipt of plaintiff’s  
8 sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous  
9 in nature, and, unless enjoined, will continue to occur in the future.

10 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
11 enforcement agencies have failed to commence and diligently prosecute a cause of action  
12 against DEFENDANTS under Proposition 65.

13 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
15 reasonably foreseeable use of these PRODUCTS results in exposures that require a “clear and  
16 reasonable” warning under Proposition 65.

17 31. DEFENDANTS knew or should have known that the PRODUCTS they  
18 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
19 CHEMICAL.

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

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

25 34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
26 PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or  
27 ingestion.

28

1 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
2 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental  
3 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
4 use to individuals in the State of California.

5 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
6 consumers and other individuals in California who have been, or will be, exposed to the  
7 LISTED CHEMICAL.

8 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
9 directly by California voters, consumers and other individuals exposed to the LISTED  
10 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable  
11 use of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,” have  
12 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
13 adequate remedy at law.

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

17 39. As a consequence of the above-described acts, Health and Safety Code  
18 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
19 DEFENDANTS.

20 **PRAYER FOR RELIEF**

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

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

25 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
26 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
27 offering the PRODUCTS for sale or use in California without first providing a “clear and  
28

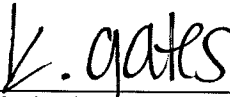
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

- 3. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: April 8, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:  \_\_\_\_\_  
Kimberly Gates  
Attorneys for Plaintiff  
DR. WHITNEY R. LEEMAN