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FILED

JUN 5 2015

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
Bar. S. Chais, Deputy

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

CIV 1502071

LAURENCE VINOCUR,

Plaintiff,

v.

POETRY CORPORATION;
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 LAURENCE
3 VINOCUR (“Plaintiff” or “Vinocur”) in the public interest of the citizens of California to enforce
4 the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in vinyl/PVC belts sold in California.

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

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

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

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

22 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC
23 belts containing DEHP as follows:

24 a. Defendants manufacture, distribute, import, sell, and/or offer for sale
25 vinyl/PVC belts containing DEHP without a warning including, but not limited to, the
26 *Poetry Romper with Belt, S/#498682, #2964986211.*

27 7. All such vinyl/PVC belts containing DEHP, described above in paragraph 6(a), shall
28 hereinafter be referred to as the “PRODUCTS.”

1 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS'
2 purposeful availing renders the exercise of personal jurisdiction by California courts consistent
3 with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

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

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

15 28. On March 13, 2015, plaintiff’s sixty-day notice of violation, together with the
16 requisite certificate of merit, was provided to Poetry Corporation and certain public enforcement
17 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
18 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
19 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without
20 the individual purchasers and users first having been provided with a “clear and reasonable
21 warning” regarding such toxic exposures, as required by Proposition 65.

22 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
23 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
24 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-
25 day notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in
26 nature, and will continue to occur in the future.

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28 ///

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

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

7 32. 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 33. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
12 reasonably foreseeable use.

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

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

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

23 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 consumers and other individuals in California who were or who would become exposed to the
25 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable
26 uses of the PRODUCTS.

27 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
2 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
3 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

7 40. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
8 also specifically authorizes the Court to grant injunctive relief against 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 § 25249.7(b), assess civil
12 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

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

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

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

20 Dated: June 3, 2015

21 Respectfully Submitted,
22 THE CHANLER GROUP

23 By: 

24 Jonathan A. Bornstein
25 Attorneys for Plaintiff
26 LAURENCE VINO CUR
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