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ENDORSED
FILED
ALAMEDA COUNTY

JUL 06 2016

CLERK OF THE SUPERIOR COURT
By Cleci Johnson Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
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12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 THE SCOTT FETZER COMPANY;
16 WAYNE/SCOTT FETZER COMPANY; and
DOES 1-150, inclusive,

17 Defendants.
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Case No. RG 15776637

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 14. Defendant WAYNE/SCOTT FETZER COMPANY (“WAYNE SCOTT”) is a
2 person in the course of doing business within the meaning of Health and Safety Code section
3 25249.11.

4 15. WAYNE SCOTT manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 16. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
9 persons in the course of doing business within the meaning of Health and Safety Code section
10 25249.11.

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

15 18. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
16 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

20 20. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
21 the course of doing business within the meaning of Health and Safety Code section 25249.11.

22 21. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
23 State of California.

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

3 23. SCOTT FETZER, WAYNE SCOTT, MANUFACTURER DEFENDANTS,
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
5 collectively be referred to as "DEFENDANTS."

6 **VENUE AND JURISDICTION**

7 24. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
8 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
9 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
10 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
11 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
12 PRODUCTS.

13 25. The California Superior Court has jurisdiction over this action pursuant to
14 California Constitution Article VI, section 10, which grants the Superior Court "original
15 jurisdiction in all causes except those given by statute to other trial courts." The statute under
16 which this action is brought does not specify any other basis of subject matter jurisdiction.

17 26. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
19 association that is a citizen of the State of California, has sufficient minimum contacts in the
20 State of California, and/or otherwise purposefully avails itself of the California market.
21 DEFENDANTS' purposeful availing renders the exercise of personal jurisdiction by California
22 courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

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

25 27. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 26, inclusive.

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

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

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

17 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
18 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
19 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
20 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
21 continuous in nature, and will continue to occur in the future.

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

25 33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
26 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
27 a “clear and reasonable” warning under Proposition 65.
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1 34. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

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

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

10 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
11 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
12 and/or ingestion.

13 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
14 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
15 accidental participation in the manufacture, importation, distribution, sale, and offering of the
16 PRODUCTS for sale or use to individuals in the State of California.

17 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers and other individuals in the State of California who were or who would become
19 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
20 reasonably foreseeable uses of the PRODUCTS.

21 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
22 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
23 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
24 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
25 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.
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