

COPY

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

David R. Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
Bush & Henry
3270 Mendocino Ave. #2E
Santa Rosa, CA 95403
Telephone: (707) 541-6255
Facsimile: (707) 676-4301

Attorneys for Plaintiff
Michael DiPirro

ENDORSED
FILED
ALAMEDA COURT
JUL 28 2015
CLERK OF THE SUPERIOR COURT
by Donnan Pham
Deputy

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

MICHAEL DIPIRRO,

Plaintiff,

v.

NEWELL RUBBERMAID INC.; SANFORD,
L.P.; and DOES 1-150, inclusive,

Defendants.

Case No. RG15779692

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MICHAEL
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in business card holders with plastic sleeve sheets sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on the business card
8 holders with plastic sleeve sheets manufactured, distributed, and offered for sale or use to
9 consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the business card holders
11 with plastic sleeve sheets that defendants manufacture, distribute, and offer for sale to
12 consumers 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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and 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, and sell business card holders with plastic
24 sleeve sheets, including, but not limited to, the *Rolodex Professional 3-Ring Business Card*
25 *Holder, 200-Card, Black (#66451) (UPC # 071912664512)*, that contain DEHP in levels that
26 require a warning under Proposition 65. All such business card holders with plastic sleeve
27 sheets containing DEHP are referred to collectively hereinafter as “PRODUCTS.”
28

1 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
2 persons in the course of doing business within the meaning of Health and Safety Code section
3 25249.11.

4 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
7 California.

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

10 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
11 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
12 in the state of California.

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

15 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
16 state of California.

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

22 22. NEWELL, SANFORD, MANUFACTURER DEFENDANTS, DISTRIBUTOR
23 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
24 referred to as “DEFENDANTS.”

25 **VENUE AND JURISDICTION**

26 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
27 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
28

1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 county with respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 25, inclusive.

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

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

26 29. On April 21, 2015, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to NEWELL, SANFORD and certain public
28

1 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
2 containing the LISTED CHEMICAL, purchasers and users in the state of California were being
3 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the
4 PRODUCTS, without the individual purchasers and users first having been provided with a
5 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

6 30. DEFENDANTS have engaged in the manufacture, distribution, and offering of
7 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
8 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
9 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
10 and will continue to occur in the future.

11 31. After receiving the claims asserted in the sixty-day notice of violation, the
12 appropriate public enforcement agencies have failed to commence and diligently prosecute a
13 cause of action against DEFENDANTS under Proposition 65.

14 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
15 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
16 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
17 65.

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

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

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

26
27
28

1 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
2 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
3 and/or ingestion.

4 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
5 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
6 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
7 sale or use to individuals in the state of California.

8 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
9 consumers and other individuals in the state of California who were or who would become
10 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
11 reasonably foreseeable uses of the PRODUCTS.

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

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

20 41. As a consequence of the above-described acts, Health and Safety Code
21 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

23 **PRAYER FOR RELIEF**

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

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

27
28

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

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

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

8
9 Dated: July 24th, 2015

Respectfully Submitted,
BUSH & HENRY

10
11 By:  _____

Jennifer Henry
Attorneys for Plaintiff
MICHAEL DIPIRRO