

ENDORSED
FILED
ALAMEDA COUNTY

NOV 02 2015

CLERK OF THE SUPERIOR COURT
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 MICHAEL DIPIRRO,

17 Plaintiff,

18 v.

19 ACCO BRANDS CORPORATION; and
20 DOES 1-150, inclusive,

21 Defendants.
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Case No. RG 15 791352

**FIRST AMENDED 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 Diisononyl phthalate (“DINP”), a toxic chemical found in
5 binders 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 DINP present in and on the binders
8 manufactured, distributed, and offered for sale or use to consumers throughout the state of
9 California.

10 3. High levels of DINP are commonly found in and on the binders that defendants
11 manufacture, distribute, and offer for sale to consumers throughout the state of California.

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

17 5. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
18 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
19 warning” requirements of the act one year later on December 30, 2014. Cal. Code Regs. tit. 27,
20 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to hereinafter as
21 the “LISTED CHEMICAL.”

22 6. Defendants manufacture, distribute, and sell binders, including, but not limited to,
23 the *Wilson Jones® Custom Imprint Presentation Binder, 1" Rings, Black (#W46100) (UPC #*
24 *078910461006)*, that contain DINP in levels that require a warning under Proposition 65. All
25 such binders containing DINP are referred to collectively hereinafter as “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and other individuals in the state of
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
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1 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
2 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
3 & (b)(1).

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

8 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
9 penalties against defendants for their violations of Proposition 65.

10 **PARTIES**

11 10. Plaintiff MICHAEL DIPIRRO is a citizen of the state of California who is
12 dedicated to protecting the health of California citizens through the elimination or reduction of
13 toxic exposures from consumer products; and he brings this action in the public interest
14 pursuant to Health and Safety Code section 25249.7(d).

15 11. Defendant ACCO BRANDS CORPORATION ("ACCO") is a person in the
16 course of doing business within the meaning of Health and Safety Code section 25249.11.

17 12. ACCO manufactures, distributes, and/or offers the PRODUCTS for sale or use in
18 the state of California, or implies by its conduct that it manufactures, distributes, and/or offers
19 the PRODUCTS for sale or use in the state of California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons in the course of doing business within the meaning of Health and Safety Code section
22 25249.11.

23 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
24 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
25 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
26 California.

1 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
2 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
3 and will continue to occur in the future.

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

7 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
8 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
9 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
10 65.

11 31. DEFENDANTS knew or should have known that the PRODUCTS they
12 manufacture, distribute, and offer for sale or use in California contain the LISTED
13 CHEMICAL.

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

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

19 34. 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 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
23 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
24 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
25 sale or use to individuals in the state of California.

26 36. 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
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1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
2 reasonably foreseeable uses of the PRODUCTS.

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

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

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

14 **PRAYER FOR RELIEF**

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

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

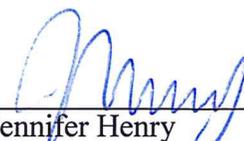
18 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
19 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
20 offering the PRODUCTS for sale or use in California without first providing a “clear and
21 reasonable warning” as defined by California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

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

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

1 Dated: October 30, 2015

2 Respectfully Submitted,
3 BUSH & HENRY

4 By: 
5 Jennifer Henry
6 Attorneys for Plaintiff
7 MICHAEL DIPIRRO

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