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ENDORSED
FILED
ALAMEDA COUNTY

JUL 29 2015

CLERK OF THE SUPERIOR COURT
By Josh Voorhees Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

RG15779827

15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 J.T. POSEY COMPANY; and DOES 1-150,
19 inclusive,

20 Defendants.

) Case No. _____

) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**

) (Health & Safety Code § 25249.5 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E. in the public interest of the citizens of the State of California to enforce the
4 People's right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl/PVC lap cushions sold by
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens and other individuals not covered by California's Occupational Safety
9 Health Act, Labor Code section 6300 et seq. about the risks of exposure to DEHP present in and
10 on vinyl/PVC lap cushions manufactured, distributed, and offered for sale or use to consumers
11 and other individuals throughout the State of California. Individuals not covered by California's
12 Occupational Safety Health Act, Labor Code section 6300 et seq. who purchase, use or handle
13 defendants' products are referred to hereinafter as "consumers".

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC lap cushions that
15 defendants manufacture, distribute, and offer for sale without a warning to consumers
16 throughout the State of California.

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

22 5. On October 24, 2003, California identified and listed DEHP pursuant to
23 Proposition 65 as a chemical known to cause birth defects or other reproductive harm). DEHP
24 became subject to the "clear and reasonable warning" requirements of the act one year later on
25 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(eb); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 14. 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 15. 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 sections 25249.6
10 and 25249.11.

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

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

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

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

24 20. J.T. POSEY, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”
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1 VENUE AND JURISDICTION

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

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

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

18 FIRST CAUSE OF ACTION

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

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

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

26 26. Proposition 65 states, “[n]o person in the course of doing business shall
27 knowingly and intentionally expose any individual to a chemical known to the state to cause
28

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . .” Health & Safety Code § 25249.6.

3 27. On April 29, 2015, plaintiff served a sixty-day notice of violation, together with
4 the requisite certificate of merit, on J.T. POSEY and certain public enforcement agencies
5 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP,
6 consumers users in the State of California were being exposed to DEHP resulting from their
7 reasonably foreseeable use of the PRODUCTS, without the consumers first having been
8 provided with a “clear and reasonable warning” regarding the harms associated with such
9 exposures, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
13 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
14 the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
16 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS
17 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
18 violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
22 consumers in California are not exempt from the “clear and reasonable” warning requirements
23 of Proposition 65, yet DEFENDANTS provide no warning.

24 31. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufactured, imported, distributed, sell, and offer for sale or use in California contained
26 DEHP.

1 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
2 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

3 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
4 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
5 of Regulations, section 25602(b).

6 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

8 35. DEFENDANTS intended that exposures to DEHP from the reasonably
9 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation
10 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
11 use to consumers and other individuals in California.

12 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
13 consumers in California who were or who would become exposed to DEHP through dermal
14 contact and/or ingestion resulting from their use of the PRODUCTS.

15 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
16 directly by California voters, consumers exposed to DEHP through dermal contact and/or
17 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear
18 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
19 for which they have no plain, speedy, or adequate remedy at law.

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

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

1 PRAYER FOR RELIEF

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a “clear and reasonable warning” as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

16 5. That the Court grant such other and further relief as may be just and proper.

17
18 Dated: July 29, 2015

Respectfully Submitted,
THE CHANLER GROUP

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21 By: 
22 Christopher Tuttle
23 Attorneys for Plaintiff
24 ANTHONY E. HELD, PH.D., P.E.
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