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FILED

APR 28 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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

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

Plaintiff,

v.

NAVITOR, INC.; TAYLOR CORPORATION;
and DOES 1-150, inclusive,

Defendants.

Case No. CN **1601536** -

**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 tapes and stickers 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 about the risks of exposure to DEHP present in
9 and on vinyl/PVC tapes and stickers manufactured, distributed, and offered for sale or use to
10 consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC tapes and stickers
12 that defendants manufacture, distribute, and offer for sale to consumers and other individuals
13 throughout the State of California.

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

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

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
25 hazard warnings in California, vinyl/PVC tapes and stickers containing DEHP.

26 7. Defendants also manufacture, distribute, import, sell and/or offer for sale without
27 health hazard warnings in California, the *Cosco Black ¼" Black Gloss Art Tape, #098075, UPC*

1 #0 39956 98075 3 and the *Creative Start Indoor/Outdoor Letters & Numbers 2 in. Black*
2 *Helvetica, Item #098139, UPC #0 39956 98139 2*. All vinyl/PVC tapes and stickers containing
3 DEHP are referred to collectively hereinafter as “PRODUCTS.”

4 8. Defendants’ failure to warn consumers and other individuals in the State of
5 California of the health hazards associated with exposures to DEHP in conjunction with
6 defendants’ sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
7 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
8 Health & Safety Code § 25249.7(a) & (b)(1).

9 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel defendants to provide purchasers or users of the
11 PRODUCTS with the required warning regarding the health hazards associated with exposures
12 to DEHP. Health & Safety Code § 25249.7(a).

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

15 **PARTIES**

16 11. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
17 who is dedicated to protecting the health of California citizens through the elimination or
18 reduction of toxic exposures from consumer products; and he brings this action in the public
19 interest pursuant to Health and Safety Code section 25249.7(d).

20 12. Defendant NAVITOR, INC. (“NAVITOR”) is a person in the course of doing
21 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

22 13. NAVITOR manufactures, imports, distributes, sells, and/or offers the PRODUCTS
23 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 14. Defendant TAYLOR CORPORATION (“TAYLOR”) is a person in the course of
26 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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1 15. TAYLOR manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 16. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
5 person in the course of doing business within the meaning of Health and Safety Code sections
6 25249.6 and 25249.11.

7 17. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
8 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
9 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
10 California.

11 18. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

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

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

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

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

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

7 30. On April 29, 2015, plaintiff served a sixty-day notice of violation, together with
8 the requisite certificate of merit, on NAVITOR, TAYLOR and certain public enforcement
9 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing
10 DEHP, purchasers and users in the State of California were being exposed to DEHP resulting
11 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
12 users first having been provided with a “clear and reasonable warning” regarding the harms
13 associated with such exposures, as required by Proposition 65.

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

19 32. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
20 public enforcement agencies have commenced and diligently prosecuted a cause of action
21 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
22 subject of plaintiff’s notice of violation.

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

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1 34. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufactured, imported, distributed, sold, and offered for sale or use in California contained
3 DEHP.

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

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

9 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
10 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

11 38. DEFENDANTS intended that exposures to DEHP from the reasonably
12 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
13 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
14 use to consumers and other individuals in California.

15 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
16 consumers and other individuals in California who were or who would become exposed to
17 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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