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ENDORSED
FILED
ALAMEDA COUNTY

SEP 22 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11 MARK MOORBERG,
12 Plaintiff,

13 v.

14 HOBBICO, INC.,
15 Defendant.
16

) Case No. RG 15786812
)
) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
)
) (Health & Safety Code § 25249.5 *et seq.*)
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1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MARK
3 MOORBERG 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 cutting mats sold by the
6 defendant in California.

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

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC cutting mats that
15 the defendant manufactures, distributes, and offers 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 and other reproductive harm. DEHP
24 became subject to the “clear and reasonable warning” requirements of the act one year later on
25 October 23, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 **VENUE AND JURISDICTION**

2 14. 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 DEFENDANT, because one or more instances of
5 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANT
6 conducted, and continues to conduct, business in Alameda County with respect to the
7 PRODUCTS.

8 15. 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 16. The California Superior Court has jurisdiction over DEFENDANT based on
13 plaintiff’s information and good faith belief that 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 DEFENDANT’S 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 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 16, inclusive.

22 18. 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 19. 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
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . . ” Health & Safety Code § 25249.6.

3 20. On June 26, 2015, plaintiff served a sixty-day notice of violation, together with
4 the requisite certificate of merit, on HOBICO and the requisite public enforcement agencies
5 alleging that, as a result of DEFENDANT’S sales of the PRODUCTS containing DEHP,
6 consumers in the State of California ae being exposed to DEHP resulting from their reasonably
7 foreseeable use of the PRODUCTS, without the consumers first having been provided with a
8 “clear and reasonable warning” regarding the harms associated with such exposures, as required
9 by Proposition 65.

10 21. DEFENDANT manufactures, imports, distributes, sells, and offers the
11 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
12 DEFENDANT’S violations have continued beyond its receipt of plaintiff’s sixty-day notice of
13 violation. DEFENDANT’S violations are ongoing and continuous in nature and, as such, will
14 continue in the future.

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

19 23. The PRODUCTS that DEFENDANT manufactures, imports, distributes, sells,
20 and offers for sale or use in California causes exposures to DEHP as a result of the reasonably
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANT and endured by
22 consumers in California are not exempt from the “clear and reasonable” warning requirements
23 of Proposition 65, yet DEFENDANTS provides no warning.

24 24. DEFENDANT knew or should have known that the PRODUCTS it manufactures,
25 imports, distributes, sells, and offers for sale or use in California contain DEHP.

26 25. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
27 to DEHP through dermal contact and ingestion during reasonably foreseeable use.

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

4 27. DEFENDANT knows that the normal and reasonably foreseeable use of the
5 PRODUCTS exposes consumers to DEHP through dermal contact and ingestion.

6 28. DEFENDANT intends that exposures to DEHP from the reasonably foreseeable
7 use of the PRODUCTS will occur by its deliberate, non-accidental participation in the
8 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
9 consumers in California.

10 29. DEFENDANT failed to provide a “clear and reasonable warning” to those
11 consumers in California who have been or who will become exposed to DEHP through dermal
12 contact and ingestion resulting from their use of the PRODUCTS.

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

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

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

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1 **PRAYER FOR RELIEF**

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

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

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

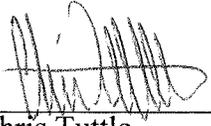
10 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
11 preliminary and permanent injunctions mandating that DEFENDANT recall all PRODUCTS
12 currently in the chain of commerce in California without a “clear and reasonable warning” as
13 defined by California Code of Regulations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

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

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

16 Dated: September 21, 2015

17 Respectfully Submitted,
18 THE CHANLER GROUP

19 By: 
20 Chris Tuttle
21 Attorneys for Plaintiff
22 MARK MOORBERG
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