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FILED

SEP 2 - 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

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

MARK MOORBERG

Plaintiff,

v.

JOBAR INTERNATIONAL, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. CW 1503228

**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 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-ethylhexyl)
5 phthalate (“DEHP”), a toxic chemical found in vinyl/PVC back stretchers, and vinyl/PVC toilet
6 seat cushions sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ 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 back stretchers, and vinyl/PVC toilet seat
11 cushions manufactured, distributed, and offered for sale or use throughout the State of
12 California. Individuals not covered by California’s Occupational Safety Health Act, Labor
13 Code section 6300 et seq. who purchase, use or handle defendants’ products are referred to
14 hereinafter as “consumers”.

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

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

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

1 12. JOBAR manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
2 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 13. 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 14. 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 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

14 16. 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 17. 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 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
21 State of California.

22 19. 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.

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

3 26. 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 27. On June 26, 2015, plaintiff served a sixty-day notice of violation, together with
8 the requisite certificate of merit, on JOBAR and certain public enforcement agencies alleging
9 that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP, consumers in
10 the State of California were being exposed to DEHP resulting from their reasonably foreseeable
11 use of the PRODUCTS, without the consumers first having been provided with a “clear and
12 reasonable warning” regarding the harms associated with such exposures, as required by
13 Proposition 65.

14 28. 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 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
20 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
21 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
22 violation.

23 30. 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 in California are not exempt from the “clear and reasonable” warning requirements
27 of Proposition 65, yet DEFENDANTS provide no warning.

1 31. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.

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

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

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

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

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

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

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

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

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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

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

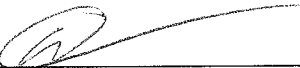
4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

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Dated: September 1, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 

Warren M. Klein
Attorneys for Plaintiff
MARK MOORBERG