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ENDORSED
FILED
Superior Court of California
County of San Francisco

JAN 15 2016

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION

11 CGC-16-549929

12 MARK MOORBERG,

13 Plaintiff,

14 v.

15 WILLIAM PRYM, INC.; PRYM
16 CONSUMER USA INC.; and DOES 1-150,
inclusive,

17 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 MARK
3 MOORBERG (“MOORBERG”) in the public interest of the citizens of the State of California
4 to enforce the 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
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 cutting mats 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 vinyl/PVC cutting mats 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 reproductive harm. DEHP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on October
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(eb); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 13. Defendant PRYM CONSUMER USA INC. (“PRYM CONSUMER”) is a person
2 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
3 and 25249.11.

4 14. PRYM CONSUMER manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
14 California.

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

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

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

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

26 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
27 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
28

1 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
2 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
3 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

4 22. WILLIAM PRYM, PRYM CONSUMER, MANUFACTURER DEFENDANTS,
5 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
6 collectively be referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in San Francisco County Superior Court, pursuant to Code of
9 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
10 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
11 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
12 DEFENDANTS conducted, and continue to conduct, business in San Francisco County with
13 respect to the PRODUCTS.

14 24. The California Superior Court has jurisdiction over this action pursuant to
15 California Constitution Article VI, section 10, which grants the Superior Court "original
16 jurisdiction in all causes except those given by statute to other trial courts." The statute under
17 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

24 **FIRST CAUSE OF ACTION**

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

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 25, inclusive.
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1 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.”

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

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

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

21 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
22 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS
23 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
24 violation.

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

3 33. DEFENDANTS knew or should have known that the PRODUCTS they
4 manufactured, imported, distributed, sell, and offer for sale or use in California contain DEHP.

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

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

10 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

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

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

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

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

