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ENDORSED
FILED
ALAMEDA COUNTY

OCT 15 2015

CLERK OF THE SUPERIOR COURT
By D. Oliver, Deputy

8 *Attorneys for Plaintiff*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 MARTHA VELARDE,
12 Plaintiff,
13 vs.
14 ORBIT IRRIGATION PRODUCTS,
15 INC.,
16 Defendant.

CASE NO.: *RG* 15789620

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

BY FAX

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18
19 Plaintiff Martha Velarde ("Plaintiff" or "Espinosa"), by and through her attorneys,
20 alleges the following cause of action in the public interest of the citizens of the State of
21 California.

22 BACKGROUND OF THE CASE

23 1. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
25 at the Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), which reads, in relevant part,
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to the chemicals Diisononyl phthalate (DINP) and Di(2-ethylhexyl)
4 phthalate (DEHP) that are found in PVC pipes sold and/or distributed by defendant Orbit
5 Irrigation Products, Inc. (“Orbit” or “Defendant”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
8 known to the State to cause cancer and it has come under the purview of Proposition 65
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
11 known to cause reproductive toxicity.

12 4. DINP is a harmful chemical known to the State of California to cause cancer. On
13 December 20, 2013, the State of California listed DINP as a chemical known to cause cancer and
14 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
15 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

16 5. Proposition 65 requires all businesses with ten (10) or more employees that
17 operate within California or sell products therein to comply with Proposition 65 regulations.
18 Included in such regulations is the requirement that businesses must label any product containing
19 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
20 intentionally” exposing any person to it.

21 6. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
22 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
23 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
24 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
25 Code § 25249.7.

26 7. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
27 and/or offers for sale, without the required warning, PVC pipes in California containing DEHP
28

1 and DINP. These products include, but are not limited to, *Orbit 3/4" x 24" Flexible PVC Pipe*,
2 *UPC No. 0 46878 37347 1, Model No. 37347* (the "Product").

3 8. Defendant's failure to warn consumers, workers, and other individuals in
4 California of the health hazards associated with exposure to DEHP and/or DINP in conjunction
5 with the sale, manufacture, and/or distribution of the Product is a violation of Proposition 65 and
6 subjects Defendant to the enjoinder and civil penalties described herein.

7 9. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
8 65 in accordance with Health and Safety Code § 25249.7(b).

9 10. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
10 Defendant to provide purchasers or users of the Product with the required warnings related to the
11 dangers and health hazards associated with exposure to DEHP and DINP pursuant to Health and
12 Safety Code § 25249.7(a).

13 PARTIES

14 11. Plaintiff is a citizen of the State of California acting in the interest of the general
15 public to promote awareness of exposures to toxic chemicals in products sold in California and
16 to improve human health by reducing hazardous substances contained in such items. He brings
17 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

18 12. Defendant Orbit is the world leader in manufacturing and supplying irrigation,
19 misting, and home improvement products to homeowners in forty countries across five
20 continents. Through its business, Orbit effectively manufactures, imports, distributes, sells,
21 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that
22 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
23 California. Orbit maintains a registered agent for service of process at c/o CT Corporation
24 System, 1108 E. South Union Avenue, Midvale, UT 84047. Orbit is a "person" in the course of
25 doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

26 VENUE AND JURISDICTION

27 13. Venue is proper in the County of Alameda because one or more of the instances
28 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant

1 conducted, and continues to conduct, business in the County of Alameda with respect to the
2 Product.

3 14. This Court has jurisdiction over this action pursuant to California Constitution
4 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
5 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
6 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
7 this Court has jurisdiction over this lawsuit.

8 15. This Court has jurisdiction over Defendant because it has sufficient minimum
9 contacts with the State of California, and/or has otherwise purposefully availed itself of the
10 California market. Such purposeful availment has rendered the exercise of jurisdiction by
11 California courts consistent and permissible with traditional notions of fair play and substantial
12 justice.

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 16. On July 22, 2015, Plaintiff gave notice of alleged violation of Health and Safety
15 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
16 DEHP and DINP contained in the Product without proper warning, subject to a private action to
17 Defendant and to the California Attorney General's office and the offices of the County District
18 attorneys and City Attorneys for each city with a population greater than 750,000 persons
19 wherein the herein violations allegedly occurred.

20 17. The Notice complied with all procedural requirements of Proposition 65 including
21 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
22 least one person with relevant and appropriate expertise who reviewed relevant data regarding
23 DEHP and DINP exposure, and that counsel believed there was meritorious and reasonable cause
24 for a private action.

25 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
26 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
27 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
28 are the subject of Plaintiff's Notice of violation.

1 the temperature of the water. Elevated water temperatures are not expected during use that will
2 lead to increased kinetics of DEHP and DINP from the flexible PVC pipe into the discharged
3 water. Low flow rates of water through the drip hose flexible tubing will permit longer residence
4 in the tubing leading to higher levels of DEHP and DINP into the water passing through the
5 flexible PVC pipe. If water is held static inside the flexible PVC pipe, levels of DEHP and DINP
6 will continually increase in the water contained within the hose until an equilibrium level of
7 DEHP and DINP is reached in the water. Finally, while direct mouthing of the product does not
8 seem likely, indirect ingestion can occur by handling the flexible PVC pipe with subsequent
9 touching of the users hand to mouth. Should the flexible PVC pipe be used to irrigate crops,
10 there is the potential for uptake and accumulation of DEHP and DINP through water passing
11 through the flexible PVC pipe into the crop and ingestion of DEHP, DINP, and metabolites in
12 edible portions of the plant.

13 28. Plaintiff, based on her best information and belief, avers that such exposures will
14 continue every day until clear and reasonable warnings are provided to Product purchasers and
15 users or until this known toxic chemical is removed from the Product.

16 29. Defendant has knowledge that the normal and reasonably foreseeable use of the
17 Product exposes individuals to DEHP and DINP, and Defendant intends that exposures to DEHP
18 and DINP will occur by its deliberate, non-accidental participation in the manufacture,
19 importation, distribution, sale and offering of the Product to consumers in California

20 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
21 Complaint.

22 31. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
23 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

24 32. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
25 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.


26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
28 following relief:

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- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: October 14, 2015

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