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T. NGO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

15CV288859

MARK MOORBERG,
Plaintiff,

v.

GLOBAL CONCEPTS LIMITED, INC.; CVS
HEALTH CORPORATION; CVS
PHARMACY, INC.; and DOES 1-150,
inclusive,
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 Moorberg in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a
5 toxic chemical found in and on the vinyl/PVC sound amplifier cords sold by defendants in
6 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 the vinyl/PVC sound amplifier cords manufactured,
11 distributed, and offered for sale or use throughout the State of California. Individuals not
12 covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who
13 purchase, 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 sound amplifier
15 cords that defendants manufacture, distribute, and offer for sale to consumers throughout the
16 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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects (and 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(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 13. Defendant CVS HEALTH CORPORATION (“CVS HEALTH”) is a person in the
4 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
5 25249.11.

6 14. CVS HEALTH manufactures, imports, distributes, sells, and/or offers the
7 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
8 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
9 State of California.

10 15. Defendant CVS PHARMACY, INC. (“CVS PHARMACY”) is a person in the
11 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
12 25249.11.

13 16. CVS PHARMACY manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
15 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
16 State of California.

17 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
18 person in the course of doing business within the meaning of Health and Safety Code sections
19 25249.6 and 25249.11.

20 18. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
21 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
22 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
23 sale or use in California.

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

1 use of the PRODUCTS, without the consumers first receiving a “clear and reasonable warning”
2 regarding the harms associated with exposures to DEHP, as required by Proposition 65.

3 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
4 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
5 violations have continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As
6 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
7 will continue in the future.

8 33. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
9 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
10 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of
11 violation.

12 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
13 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
14 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
15 consumers in California are not exempt from the “clear and reasonable” warning requirements
16 of Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

17 35. DEFENDANTS knew or should have known that the PRODUCTS they
18 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

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

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

24 38. DEFENDANTS know that the normal and reasonably foreseeable use of the
25 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

26 39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
27 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
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1 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
2 consumers in California.

3 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers in California who have been, or who will be, exposed to DEHP through dermal
5 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

14 43. As a consequence of the above-described acts, Health and Safety Code
15 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
16 DEFENDANTS.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
24 offering the PRODUCTS for sale or use in California without first providing a “clear and
25 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
26 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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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.

Dated: December 4, 2015

Respectfully submitted,
THE CHANLER GROUP

By: 
Clifford Chanler
Attorneys for Plaintiff
MARK MOORBERG