

1 Josh Voorhees, State Bar No. 241436
2 Kimberly Gates, State Bar No. 282369
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, PH.D.

FILED

NOV 30 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

OFFICE DEPOT, INC.; HANGZHOU
GREATSTAR TOOLS CO., LTD., and DOES
1-150, inclusive,

Defendants.

Case No. CIV1501296

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by plaintiff
3 WHITNEY R. LEEMAN, PH.D. in the public interest of the citizens of the State of California
4 to enforce the People’s right to be informed about exposures to di(2-ethylhexyl)phthalate
5 (“DEHP”), a toxic chemical that is found in the vinyl/PVC grips of tools sold in California.

6 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’
7 continuing failure to warn California citizens about the risks of exposures to DEHP present in
8 and on the vinyl/PVC grips of tools manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC grips of
11 tools that defendants import, manufacture, distribute, ship, sell and offer for sale to consumers
12 throughout the State of California.

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

18 5. On October 24, 2003, pursuant to Proposition 65, California identified and listed
19 DEHP as a chemical known to cause birth defects or other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b).) DEHP is referred to hereinafter as the (“LISTED CHEMICAL”).

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, tools with vinyl/PVC grips containing the LISTED CHEMICAL,
25 including, but not limited to, the grips of certain tools such as the pliers offered in connection
26 with the *31-Piece Precision Tool Set, Item 707-442, UPC #7 35854 86153 7*. All such tools
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1 with vinyl/PVC grips containing the LISTED CHEMICAL are referred to collectively
2 hereinafter as the (“PRODUCTS”).

3 7. Defendants’ failure to warn workers, consumers and other individuals in
4 California of the harms associated with exposures to the LISTED CHEMICAL in conjunction
5 with defendants’ sales of the PRODUCTS containing the LISTED CHEMICAL are violations
6 of Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil
7 penalties for each violation. Health & Safety Code §§ 25249.7(a) & (b)(1).

8 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil
13 penalties against defendants, and each of them, for each violation of Proposition 65.

14 **PARTIES**

15 10. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of harmful exposures to toxic chemicals from consumer products. She brings this
18 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

19 11. Defendant Office Depot, Inc. (“OFFICE DEPOT”) is a person in the course of
20 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

21 12. OFFICE DEPOT manufactures, imports, distributes, sells, and/or offers the
22 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
23 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
24 State of California.

25 13. Defendant Hangzhou GreatStar Tools Co., Ltd. (“HANGZHOU”) is a person in
26 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
27 25249.11.

1 14. HANGZHOU manufactures, imports, distributes, sells and/or offers the
2 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
3 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
4 of California.

5 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code §§
7 25249.6 and 25249.11.

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

12 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
13 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
14 25249.11.

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

18 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
19 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
20 25249.11.

21 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
22 State of California.

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
26 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
27 herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 28. Proposition 65 states, “[n]o person in the course of doing business shall
2 knowingly and intentionally expose any individual to a chemical known to the state to cause
3 cancer or reproductive toxicity without first giving clear and reasonable warning to such
4 individual” Health & Safety Code § 25249.6.

5 29. On January 23, 2015, plaintiff served a sixty-day notice of violation and
6 accompanying certificate of merit on OFFICE DEPOT, and the requisite public enforcement
7 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
8 LISTED CHEMICAL, workers, consumers and other individuals in the State of California are
9 being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of
10 the PRODUCTS, without the individual purchasers and users first having received a “clear and
11 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

12 30. On August 10, 2015, plaintiff served a supplemental sixty-day notice of violation
13 and accompanying certificate of merit on HANGZHOU, OFFICE DEPOT and the requisite
14 public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
15 PRODUCTS containing the LISTED CHEMICAL, workers, consumers and other individuals in
16 the State of California are being exposed to the LISTED CHEMICAL resulting from their
17 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
18 having received a “clear and reasonable warning” regarding such toxic exposures, as required
19 by Proposition 65.

20 31. DEFENDANTS engage in the manufacture, importation, distribution, sale, and
21 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
22 and DEFENDANTS’ violations continue to occur beyond their receipt of plaintiff’s sixty-day
23 notices of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
24 and, unless enjoined, will continue in the future.

25 32. After receiving plaintiff’s sixty-day notices of violation, the appropriate public
26 enforcement agencies have failed to commence and diligently prosecute a cause of action
27 against any of the DEFENDANTS under Proposition 65.

1 33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
2 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
3 reasonably foreseeable use of these PRODUCTS results in exposures that require a “clear and
4 reasonable” warning under Proposition 65.

5 34. DEFENDANTS knew or should have known that the PRODUCTS they
6 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
7 CHEMICAL.

8 35. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
9 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

10 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
11 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
12 defined by title 27 of the California Code of Regulations, § 25602(b).

13 37. DEFENDANTS know that the normal and reasonably foreseeable use of the
14 PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or
15 ingestion.

16 38. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
17 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental
18 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
19 use to individuals in the State of California.

20 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and other individuals in California who have been, or will be, exposed to the
22 LISTED CHEMICAL.

23 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
24 directly by California voters, consumers and other individuals exposed to the LISTED
25 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
26 use of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,” have
27 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
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1 adequate remedy at law.

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

5 42. As a consequence of the above-described acts, Health and Safety Code
6 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
7 DEFENDANTS.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

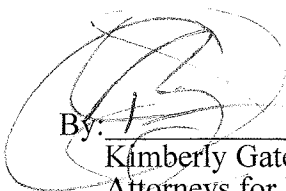
13 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily
14 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
15 PRODUCTS for sale or use in California without first providing a “clear and reasonable
16 warning” as defined by title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the
17 harms associated with exposures to the LISTED CHEMICAL;

18 3. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

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21 Dated: November 25, 2015

Respectfully Submitted,
THE CHANLER GROUP

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24 By:  for Kimberly Gates
Kimberly Gates
Attorneys for Plaintiff
25 WHITNEY R. LEEMAN, PH.D.
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