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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

LISLE CORPORATION; and DOES 1-150,
inclusive,

Defendants.

Case No. _____

16CV291646

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

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

6 2. By this Complaint, Plaintiff seeks to remedy defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of
9 exposure to DINP present in and on the vinyl/PVC grips of tools manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle defendants’ products, are referred to hereinafter as “consumers.” Detectable
13 levels of DINP are commonly found in and on components of vinyl/PVC tool grips that
14 defendants import, manufacture, distribute, ship, sell and/or offer for sale to consumers
15 throughout the State of California.

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

21 4. On December 20, 2013, California listed DINP pursuant to Proposition 65 as a
22 chemical that is known to cause cancer. DINP became subject to the “clear and reasonable
23 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
24 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to hereinafter
25 as the “LISTED CHEMICAL.”

26 5. Defendants manufacture, distribute, import, sell, and offer for sale without
27 warning in California, tools with vinyl/PVC grips containing the LISTED CHEMICAL,
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1 including, but not limited to, the *Lisle "Swivel Grip" Oil Filter Wrench, #53500, UPC #0 83045*
2 *53500 3*. All such tools with vinyl/PVC grips containing the LISTED CHEMICAL are referred
3 to collectively hereinafter as the "PRODUCTS."

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

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

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

15 **PARTIES**

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

20 10. Defendant LISLE CORPORATION is a person in the course of doing business
21 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

25 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
26 person in the course of doing business within the meaning of Health and Safety Code sections
27 25249.6 and 25249.11.

1 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
2 respect to the PRODUCTS.

3 21. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, section 10, which grants the Superior Court “original
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
6 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

13 **FIRST CAUSE OF ACTION**

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

15 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 22 inclusive.

17 24. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm.”

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

25 26. On August 10, 2015, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to LISLE, and certain public enforcement agencies
27 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
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1 CHEMICAL, consumers, and other individuals in the State of California were being exposed to
2 the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
3 without the individual purchasers and users first having received a “clear and reasonable
4 warning” regarding such toxic exposures, as required by Proposition 65.

5 27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
6 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
7 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
8 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
9 continuous in nature, and will continue to occur in the future.

10 28. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
11 enforcement agencies have failed to commence and diligently prosecute a cause of action
12 against DEFENDANTS under Proposition 65.

13 29. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
15 reasonably foreseeable uses of these products result in exposures that require a “clear and
16 reasonable” warning under Proposition 65. DEFENDANTS’ violations of Proposition 65 as a
17 result of their failure to provide warnings to consumers exposed users to DINP from the
18 PRODUCTS have continued since as far back as December 20, 2014.

19 30. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
21 CHEMICAL.

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

24 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
25 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
26 defined by title 27 of the California Code of Regulations, section 25602(b).

1 33. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
2 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
3 and/or ingestion.

4 34. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
5 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
6 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
7 use to individuals in the State of California.

8 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those
9 workers, consumers and other individuals in California not covered by California’s
10 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been or will be
11 exposed to the LISTED CHEMICAL.

12 36. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
13 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
14 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
15 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”
16 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
17 adequate remedy at law.

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

21 38. As a consequence of the above-described acts, Health and Safety Code
22 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
23 DEFENDANTS.

1 **PRAYER FOR RELIEF**

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

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

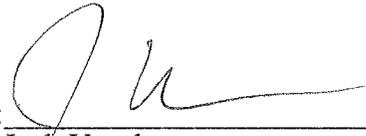
6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” as defined by title 27 of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

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

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

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15 Dated: February 17, 2016

Respectfully Submitted,
THE CHANLER GROUP

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17 By: 

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Josh Voorhees
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.