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FILED

JAN 12 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

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12 WHITNEY R. LEEMAN, PH.D.,
13 Plaintiff,
14 v.
15 ALMAR SALES CO., INC.; and DOES 1-150,
16 inclusive,
17 Defendants.

Case No. CV 16 00 123
**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 WHITNEY R.
3 LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the
4 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 charms sold by
6 defendants in 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 vinyl/PVC charms manufactured, distributed, and offered
11 for sale or use 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 the vinyl/PVC charms that
15 defendants manufacture, distribute, and offer for sale to consumers and other individuals
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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects and other 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 6. Defendants manufacture, distribute, import, sell, and offer for sale without a
2 health hazard warning in California: vinyl/PVC charms containing DEHP that require a warning
3 under Proposition 65 including, but not limited to, the *Expressions 4 Pc Accessory Charms*,
4 *EXV1078/4X*, *YC-1403-8182*, *UPC #0 24576 88852* 7. All such vinyl/PVC charms containing
5 DEHP are referred to collectively hereinafter as “PRODUCTS.”

6 7. Defendants’ failure to warn consumers and other individuals in the State of
7 California of the health hazards associated with exposures to DEHP in conjunction with
8 defendants’ sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
9 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
10 Health & Safety Code § 25249.7(a) & (b)(1).

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

15 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
16 penalties against defendants for their violations of Proposition 65.

17 **PARTIES**

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

22 11. Defendant ALMAR SALES CO., INC. (“ALMAR”) is a person in the course of
23 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

24 12. ALMAR manufactures, imports, distributes, sells, and/or offers the PRODUCTS
25 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
26 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

1 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

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

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

14 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

17 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

19 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
20 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
21 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
22 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
23 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

24 20. ALMAR, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”

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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in Marin County Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
5 wrongful conduct occurred, and continue to occur, in this county, and/or because
6 DEFENDANTS conducted, and continue to conduct, business in Marin County with respect to
7 the PRODUCTS.

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

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

18 **FIRST CAUSE OF ACTION**

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

20 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 23, inclusive.

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

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

3 27. On August 20, 2015, plaintiff served a sixty-day notice of violation, together with
4 the requisite certificate of merit, on DECOR and certain public enforcement agencies alleging
5 that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP, purchasers and
6 users in the State of California were being exposed to DEHP resulting from their reasonably
7 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
8 been provided with a “clear and reasonable warning” regarding the harms associated with such
9 exposures, as required by Proposition 65.

10 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
11 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
12 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
13 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
14 continuous in nature, and will continue to occur in the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
16 public enforcement agencies have commenced and diligently prosecuted a cause of action
17 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
18 subject of plaintiff’s notice of violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
22 consumers and other individuals in California are not exempt from the “clear and reasonable”
23 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

24 31. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufactured, imported, distributed, sold, and offered for sale or use in California contained
26 DEHP.

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1 32. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
2 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

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

6 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
7 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

8 35. DEFENDANTS intended that exposures to DEHP from the reasonably
9 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
10 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
11 use to consumers and other individuals in California.

12 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
13 consumers and other individuals in California who were or who would become exposed to
14 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

23 39. As a consequence of the above-described acts, Health and Safety Code
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.
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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” in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures DEHP;

11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a “clear and reasonable warning” as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

16 5. That the Court grant such other and further relief as may be just and proper.

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18 Dated: January 7, 2015

Respectfully Submitted,

19 THE CHANLER GROUP

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22 By: 

Josh Voorhees

Attorneys for Plaintiff

WHITNEY R. LEEMAN, PH.D.