

1 Clifford A. Chanler, State Bar No. 135534  
2 Brian C. Johnson, State Bar No. 235965  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118  
9 E-mail: cliff@chanler.com  
10 E-mail: brian@chanler.com

11 Attorneys for Plaintiff  
12 WHITNEY R. LEEMAN, PH.D.

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

16 WHITNEY R. LEEMAN, PH.D.,  
17 Plaintiff,  
18 v.  
19 DECOR CRAFT INC.; and DOES 1 – 150,  
20 inclusive,  
21 Defendants.

22  
23  
24  
25  
26  
27  
28  
Case No. **16CV290878**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code § 25249.5 *et seq.*)

ENDORSED  
2016 JAN 27 P 3:20  
S. ACKARD

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 and on the vinyl/PVC grips of tools  
6 sold by 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 the vinyl/PVC grips of tools manufactured, distributed, and  
11 offered for sale or use throughout the State of California. Individuals not covered by  
12 California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,  
13 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 grips of tools that  
15 defendants manufacture, distribute, and offer for sale to consumers throughout the State of  
16 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. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
4 person in the course of doing business within the meaning of Health and Safety Code sections  
5 25249.6 and 25249.11.

6 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
7 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,  
8 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for  
9 sale or use in California.

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

13 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
14 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
15 retailers for sale or use in the State of California, or each implies by its conduct that it  
16 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to  
17 individuals, businesses, or retailers for sale or use in the State of California.

18 17. 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 sections 25249.6  
20 and 25249.11.

21 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
22 individuals in the State of California.

23 19. 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 section 474. Plaintiff is informed and believes, and on that basis  
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
28

1           20.   DÉCOR CRAFT, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
2 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be  
3 referred to collectively as the “DEFENDANTS.”

4                                   **VENUE AND JURISDICTION**

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

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

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

21                                   **FIRST CAUSE OF ACTION**

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

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

25          25.   In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
26 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
27  
28

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

7 27. On August 20, 2015, plaintiff served a sixty-day notice of violation, together with  
8 the accompanying certificate of merit, on DÉCOR CRAFT, the California Attorney General’s  
9 Office, and all other requisite public enforcers alleging that, as a result of DEFENDANTS’ sales  
10 of the PRODUCTS, consumers in the State of California are being exposed to DEHP resulting  
11 from their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving  
12 a “clear and reasonable warning” regarding the harms associated with exposures to DEHP, as  
13 required by Proposition 65.

14 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
15 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
16 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As  
17 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined  
18 will continue in the future.

19 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
20 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
21 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
22 violation.

23 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
24 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
25 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
26 consumers in California are not exempt from the “clear and reasonable” warning requirements  
27 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations of  
28

1 Proposition 65, resulting from their failure to provide warnings to consumers and other  
2 individuals in California exposed to DEHP from the PRODUCTS have continued since as far  
3 back as August 20, 2012.

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

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

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

11 34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
12 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

13 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
14 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
15 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
16 consumers in California.

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

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

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

