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ENDORSED
FILED
ALAMEDA COUNTY

MAY 23 2016

CLERK OF THE SUPERIOR COURT
By Samie Mares
Deputy

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

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
DEE ZEE, INC.; and DOES 1-150, inclusive,
Defendants.

Case No. RG16816698

**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 the toxic chemical
5 di(2-ethylhexyl)phthalate (“DEHP”) found in and on portable safes with vinyl/PVC components
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 (i)
10 exposures to DEHP present in and on the portable safes with vinyl/PVC components
11 manufactured, distributed, and offered for sale in California by defendants. 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 portable safes with vinyl/PVC
15 components that defendants manufacture, distribute, and offer for sale to consumers throughout
16 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. On October 24, 2003, California identified and listed DEHP pursuant to
23 Proposition 65, as a chemical known to cause birth defects or other reproductive harm. DEHP
24 became subject to the “clear and reasonable warning” requirements of the act one year later on
25 October 24, 2004. Cal. Code Regs. tit. 27 § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 14. 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 15. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
5 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
6 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
7 sale or use in California.

8 16. 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 17. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
12 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
13 retailers for sale or use in the State of California, or each implies by its conduct that it
14 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
15 individuals, businesses, or retailers for sale or use in the State of California.

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

19 19. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
20 individuals in the State of California.

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

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

3 27. 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 28. On August 20, 2015, plaintiff served a sixty-day notice of violation, together with
8 the accompanying certificate of merit, on DEE ZEE, the California Attorney General, and all
9 other requisite public enforcers alleging that, as a result of DEFENDANTS’ sales of the
10 PRODUCTS, consumers in the State of California are being exposed to DEHP resulting from
11 their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a
12 “clear and reasonable warning” regarding the harms associated with exposures to DEHP, as
13 required by Proposition 65.

14 29. 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 30. 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 31. 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
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1 Proposition 65 as a result of their failure to provide warnings to consumers exposed to DEHP
2 from the PRODUCTS, have continued since as far back as August 20, 2012.

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

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

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

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

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

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

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

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