



\*14123819\*

**FILED**  
**ALAMEDA COUNTY**

DEC 08 2015

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

1 Josh Voorhees, State Bar No. 241436  
2 Troy C. Bailey, State Bar No. 277424  
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.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION

15 WHITNEY R. LEEMAN, PH.D.,  
16 Plaintiff,

17 v.

18 26 CALIFORNIA BAZAR INC.; and  
19 KITTRICH CORPORATION;  
20 Defendants.

21 ) Case No. RG15844344  
22 ) **COMPLAINT FOR CIVIL PENALTIES**  
23 ) **AND INJUNCTIVE RELIEF**  
24 ) (Health & Safety Code § 25249.5 *et seq.*)

VIA FAX

25  
26  
27  
28  
COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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 tool grips sold by  
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
8 warn California citizens about the risk of exposure to DEHP present in and on vinyl/PVC tool  
9 grips manufactured, distributed, and offered for sale or use to consumers throughout the State of  
10 California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC tool grips that  
12 defendants manufacture, distribute, and offer for sale to consumers throughout the State of  
13 California.

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

19 5. On October 24, 2003, California identified and listed DEHP pursuant to  
20 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP  
21 became subject to the "clear and reasonable warning" requirements of the act one year later on  
22 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 &  
23 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
25 hazard warnings in California, vinyl/PVC tool grips containing DEHP including, but not limited  
26 to, the *Pliers*, Item#: HY117, UPC #7 35932 58317 7. All vinyl/PVC tool grips containing  
27 DEHP are referred to collectively hereinafter as "PRODUCTS."  
28



1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 15. BAZAR and KITTRICH, shall, where appropriate, collectively be referred to as  
4 "DEFENDANTS."

5 **VENUE AND JURISDICTION**

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

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

16 18. The California Superior Court has jurisdiction over DEFENDANTS based on  
17 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
18 association that is a citizen of the State of California, has sufficient minimum contacts in the  
19 State of California, and/or otherwise purposefully avails itself of the California market.  
20 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
21 California courts consistent with traditional notions of fair play and substantial justice.  
22  
23  
24  
25  
26  
27  
28

1 **FIRST CAUSE OF ACTION**

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

3 19. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs I through 18, inclusive.

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

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

13 22. On August 20, 2015, plaintiff served a sixty-day notice of violation, together with  
14 the requisite certificate of merit, on BAZAR, KITTRICH and certain public enforcement  
15 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
16 DEHP, consumers in the State of California were being exposed to DEHP resulting from their  
17 reasonably foreseeable use of the PRODUCTS, without the consumers first having been  
18 provided with a “clear and reasonable warning” regarding the harms associated with such  
19 exposures, as required by Proposition 65.

20 23. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
23 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in  
24 the future.

25 24. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate  
26 public enforcement agencies have commenced and diligently prosecuted a cause of action  
27  
28

1 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the  
2 subject of plaintiff's notice of violation.

3 25. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
6 consumers in California are not exempt from the "clear and reasonable" warning requirements  
7 of Proposition 65, yet DEFENDANTS provide no warning.

8 26. DEFENDANTS knew or should have known that the PRODUCTS they  
9 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.

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

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

15 29. DEFENDANTS know that the normal and reasonably foreseeable use of the  
16 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

17 30. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
18 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
19 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
20 consumers in California.

21 31. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
22 consumers in California who were or who would become exposed to DEHP through dermal  
23 contact and/or ingestion resulting from their use of the PRODUCTS.

24 32. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
25 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
26 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear  
27  
28

1 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
2 for which they have no plain, speedy, or adequate remedy at law.

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

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

9 **PRAYER FOR RELIEF**

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

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

14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
16 offering the PRODUCTS for sale or use in California without first providing a “clear and  
17 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
18 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

23

24

25

26

27


28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 4. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: December 3, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
\_\_\_\_\_  
Troy C. Bailey  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN, PH.D.