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ENDORSED
FILED
ALAMEDA COUNTY
JAN 13 2016
CLERK OF THE SUPERIOR COURT
By Samuel Ramos Deputy

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

WHITNEY R. LEEMAN, PH.D.

Plaintiff,

v.

NSi INDUSTIRES, LLC,

Defendant.

Case No. RG16799944

**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 electrical tape sold by
6 defendant in California.

7 2. By this Complaint, plaintiff seeks to remedy defendant's 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 defendant's products, about the risks of
10 exposure to DEHP present in and on the vinyl/PVC electrical tape manufactured, distributed,
11 and 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 defendant's products, are referred to hereinafter as "consumers."

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC electrical tape that
15 defendant manufactures, distributes, and/or offers 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).

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VENUE AND JURISDICTION

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

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

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

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

12 20. NSi manufactures, imports, distributes, sells, and offers the PRODUCTS for sale
13 or use in violation of Health and Safety Code section 25249.6, and NSi’s violations have
14 continued beyond its receipt of plaintiff’s sixty-day notice of violation. As such, NSi’s
15 violations are ongoing and continuous in nature, and unless enjoined will continue in the future.

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

20 22. The PRODUCTS that NSi manufactures, imports, distributes, sells, and/or offers
21 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable
22 use of the PRODUCTS. Such exposures caused by NSi and endured by consumers in
23 California are not exempt from the “clear and reasonable” warning requirements of Proposition
24 65, yet NSi provides no warning. NSi’s violations of Proposition 65, resulting from its failure
25 to provide warnings to consumers exposed to DEHP from the PRODUCTS have continued
26 since as far back as August 20, 2012.

1 23. NSi knew or should have known that the PRODUCTS it manufactures, imports,
2 distributes, sells, and offers for sale in California contain DEHP.

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

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

8 26. NSi knows that the normal and reasonably foreseeable use of the PRODUCTS
9 exposes individuals to DEHP through dermal contact and/or ingestion.

10 27. NSi intends that exposures to DEHP from the reasonably foreseeable use of the
11 PRODUCTS will occur by its deliberate, non-accidental participation in the manufacture,
12 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
13 California.

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

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

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

25 31. As a consequence of the above-described acts, Health and Safety Code
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 DEFENDANTS.

