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CLERK OF COURT

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

15 **16CV293481**

16 WHITNEY R. LEEMAN, PH.D.

17 Plaintiff,

18 v.

19 THE UPPER DECK COMPANY, LLC; and  
20 DOES 1 – 150, inclusive,

21 Defendants.

22 ) Case No. \_\_\_\_\_

23 ) **COMPLAINT FOR CIVIL PENALTIES**  
24 ) **AND INJUNCTIVE RELIEF**

25 ) (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 the vinyl/PVC covers of portfolios  
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 covers of portfolios manufactured,  
11 distributed, and offered for sale or use throughout the State of California. 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 vinyl/PVC covers of portfolios  
15 that 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 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
2 hazard warnings in California, portfolios with vinyl/PVC covers that contain DEHP including,  
3 but not limited to, the *World of Warcraft Trading Card, Game Official World of Warcraft,*  
4 *Portfolio, UPC #0 53334 57171* 5. All such portfolios with vinyl/PVC covers containing DEHP  
5 are referred to collectively hereinafter as “PRODUCTS.”

6 7. Defendants’ failure to warn consumers in the State of California of the health  
7 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the  
8 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
9 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
10 § 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 consumers of the PRODUCTS with  
13 the required warning regarding the health hazards associated with exposures to DEHP. Health  
14 & 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 THE UPPER DECK COMPANY, LLC (“UPPER DECK”) is a person  
23 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
24 and 25249.11.

25 12. UPPER DECK manufactures, imports, distributes, sells, and/or offers the  
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
27  
28

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 Plaintiffs, who, therefore, sue said defendants by their fictitious names pursuant to  
25 Code of Civil Procedure section 474. Plaintiffs are informed and believe, and on that basis  
26 allege, 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.  
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1 20. UPPER DECK, 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 County 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  
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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 September 15, 2015, plaintiff served a sixty-day notice of violation, together  
8 with the accompanying certificate of merit, on UPPER DECK, the California Attorney  
9 General’s Office, and the requisite public enforcement agencies alleging that, as a result of  
10 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being  
11 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without  
12 the consumers first receiving a “clear and reasonable warning” regarding the harms associated  
13 with exposures to DEHP, as 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  
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1 Proposition 65, resulting from their failure to provide warnings to consumers exposed to DEHP  
2 from the PRODUCTS, have continued since as far back as October 21, 2012.

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

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

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

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

12 35. 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 or use to  
15 consumers in California.

16 36. 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/or ingestion resulting from their use of the PRODUCTS.

19 37. 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/or  
21 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear  
22 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm  
23 for which they have no plain, speedy, or adequate remedy at law.

24 38. 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.

1           39. As a consequence of the above-described acts, Health and Safety Code  
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4                                   **PRAYER FOR RELIEF**

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

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

9           2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
11 offering the PRODUCTS for sale or use in California without first providing a "clear and  
12 reasonable warning" in accordance with title 27 of the California Code of Regulations, section  
13 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

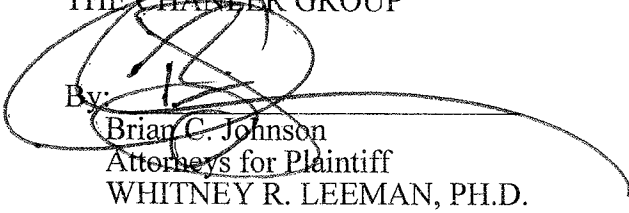
14           3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
15 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
16 currently in the chain of commerce in California without a "clear and reasonable warning" as  
17 defined by California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

18           4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

20  
21 Dated: April 4, 2016

Respectfully submitted,  
THE CHAMBER GROUP

22  
23                                   By:   
24                                   Brian C. Johnson  
25                                   Attorneys for Plaintiff  
26                                   WHITNEY R. LEEMAN, PH.D.  
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