

FILED

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MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12

13 WHITNEY R. LEEMAN, PH.D.,

14 Plaintiff,

15 v.

16 DOREL INDUSTRIES INC.; PACIFIC
17 CYCLE INC.; and DOES 1-150, inclusive,

18 Defendants.
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Case No. CIV 1600303-

**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 the vinyl/PVC audio cords offered in
6 connection with portable speaker cases sold by defendant 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 audio cords sold or offered for sale in
11 connection with portable speaker cases manufactured, distributed, and offered for sale or use
12 throughout the State of California. Individuals not covered by California’s Occupational Safety
13 Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants’ products,
14 are referred to hereinafter as “consumers.”

15 3. Detectable levels of DEHP are found in and on the vinyl/PVC audio cord
16 components of portable speaker cases that defendants manufacture, distribute, and/or offer for
17 sale to consumers throughout the State of California.

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

23 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
24 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
25 subject to the “clear and reasonable warning” requirements of the act one year later on October
26 24, 2004. Cal. Code Regs. tit. 27 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

1 13. Defendant PACIFIC CYCLE INC. (“PACIFIC CYCLE”) is a person in the
2 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

4 14. PACIFIC CYCLE manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
14 California.

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

18 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
19 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
20 in the State of California.

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

24 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

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

4 22. DOREL, PACIFIC CYCLE, MANUFACTURER DEFENDANTS,
5 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively
6 referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

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

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

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

24 **FIRST CAUSE OF ACTION**

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

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 25, inclusive.
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1 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.”

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

9 29. On October 28, 2015, plaintiff served a sixty-day notice of violation, together
10 with the accompanying certificate of merit, on DOREL, PACIFIC, the California Attorney
11 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
12 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
13 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
14 the consumers first receiving a “clear and reasonable warning” regarding the harms associated
15 with exposures to DEHP, as required by Proposition 65.

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

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

25 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell,
26 and/or offer for sale or use in California cause exposures to DEHP as a result of the reasonably
27 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
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1 consumers in California are not exempt from the “clear and reasonable” warning requirements
2 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations of
3 Proposition 65, resulting from their failure to provide warnings to consumers exposed to DEHP
4 from the PRODUCTS have continued since as far back as October 28, 2012.

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

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

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

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

14 37. DEFENDANTS intend that consumers and other individuals in California will be
15 exposed to DEHP from the reasonably foreseeable use of the PRODUCTS by their deliberate,
16 non-accidental participation in the manufacture, importation, distribution, sale, and offering of
17 the PRODUCTS for sale or use to consumers in California.

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

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