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ENDORSED
FILED
ALAMEDA COUNTY

FEB 10 2016

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

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

WHITNEY R. LEEMAN, PH.D.

Plaintiff,

v.

MURRAY CORPORATION; and DOES 1-
150, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

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1 *Murray Keystone Installation Tool, A20000P10, UPC #0 35119 09023* 9 All such vinyl/PVC
2 tool grips containing DEHP are referred to collectively hereinafter as the "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in California of the
4 harms associated with exposures to DEHP in conjunction with defendants' sales of the
5 PRODUCTS containing DEHP constitute violations of Proposition 65, and subject defendants
6 to enjoinder of such conduct, as well as civil penalties for each violation. Health & Safety
7 Code § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to DEHP. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants, and each of them, for each violation of Proposition 65.

14 **PARTIES**

15 10. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of harmful exposures to toxic chemicals from consumer products. She brings this
18 action in the public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant MURRAY CORPORATION ("MURRAY") is a person in the course
20 of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

22 12. MURRAY manufactures, imports, distributes, sells, and/or offers the PRODUCTS
23 for sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
26 person in the course of doing business within the meaning of Health and Safety Code sections
27 25249.6 and 25249.11.

1 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
2 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
3 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
4 California.

5 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
6 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
7 and 25249.11.

8 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
9 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
10 in the State of California.

11 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
12 the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

14 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
15 State of California.

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

21 20. MURRAY, MANUFACTURER DEFENDANTS, DISTRIBUTOR
22 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as
23 "DEFENDANTS."

24 **VENUE AND JURISDICTION**

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

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

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

14 **FIRST CAUSE OF ACTION**

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

16 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 23, inclusive.

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

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

26 27. On October 28, 2015, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to MURRAY and certain public enforcement
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1 agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing DEHP,
2 consumers, and other individuals in the State of California were being exposed to DEHP
3 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
4 purchasers and users first having received a "clear and reasonable warning" regarding such
5 toxic exposures, as required by Proposition 65.

6 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
7 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
8 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
9 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and
10 continuous in nature, and will continue to occur in the future.

11 29. After receiving plaintiff's sixty-day notice of violation, the appropriate public
12 enforcement agencies have failed to commence and diligently prosecute a cause of action
13 against DEFENDANTS under Proposition 65.

14 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
15 or use in California by DEFENDANTS contain DEHP in such a way that the reasonably
16 foreseeable uses of these products result in exposures that require a "clear and reasonable"
17 warning under Proposition 65.

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

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

22 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
23 continue to cause, consumer exposures to DEHP, as such exposures are defined by title 27 of
24 the California Code of Regulations, section 25602(b).

25 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
26 of the PRODUCTS expose individuals to DEHP through dermal contact and/or ingestion.
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35. DEFENDANTS intend for such exposures to DEHP from the reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or use to individuals in the State of California.

36. DEFENDANTS failed to provide a “clear and reasonable warning” to those workers, consumers and other individuals in California not covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to DEHP.

37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, workers, consumers, and other individuals exposed to DEHP through dermal contact and/or ingestion, resulting from the reasonably foreseeable uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or

1 offering the PRODUCTS for sale or use in California without first providing a “clear and
2 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
3 *et seq.*, as to the harms associated with exposures DEHP;

4 3. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

6 Dated: February 4, 2016

7 Respectfully Submitted,
THE CHANLER GROUP

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9 By 

10 Josh Voorhees
11 Attorneys for Plaintiff
12 WHITNEY R. LEEMAN, PH.D.
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