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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

FEB 09 2016

CLERK OF THE COURT  
BY: GARY FELICIANO  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

11  
12 DR. WHITNEY R. LEEMAN, PH.D.,

13 Plaintiff, *DR*

14 v.

15 PLEWS, INC., and DOES 1-150, inclusive,

16 Defendants.

Case No. **CGC 16-550328**

**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 DR. WHITNEY R.  
3 LEEMAN, in the public interest of the citizens of the State of California to enforce the People's  
4 right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate  
5 ("DEHP"), a toxic chemical found in tools with vinyl/PVC grips sold by defendants in  
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
8 warn California citizens and other individuals not covered by California's Occupational Safety  
9 Health Act, Labor Code section 6300 et seq. about the risks of exposure to DEHP present in and  
10 on tools with vinyl/PVC grips manufactured, distributed, and offered for sale or use to  
11 consumers and other individuals 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 defendants' products are referred to hereinafter as "consumers".

14 3. Detectable levels of DEHP are found in and on tools with vinyl/PVC grips that  
15 defendants manufacture, distribute, and offer for sale without a warning to consumers  
16 throughout the State of 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. On October 24, 2003, California identified and listed DEHP pursuant to  
23 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP  
24 became subject to the "clear and reasonable warning" requirements of the act one year later on  
25 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
26 25249.10(b).

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1           6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
2 hazard warnings in California, tools with vinyl/PVC grips, including, but not limited to, the  
3 *Plews LubriMatic Swivel Handled Filter Wrench, #70-539, UPC #0 28893 70539 0*. All such  
4 headphones with vinyl/PVC components containing DEHP are referred to collectively  
5 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 DR. WHITNEY R. LEEMAN is a citizen of the State of California who  
19 is dedicated to protecting the health of California citizens through the elimination or reduction  
20 of toxic exposures from consumer products; and she brings this action in the public interest  
21 pursuant to Health and Safety Code section 25249.7(d).

22           11. Defendant PLEWS, INC. (“PLEWS”) is a person in the course of doing business  
23 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

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1           13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
2 person in the course of doing business within the meaning of Health and Safety Code sections  
3 25249.6 and 25249.11.

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

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

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

14           17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
16 and 25249.11.

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

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

24           20. PLEWS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
26 referred to as “DEFENDANTS.”

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1 **VENUE AND JURISDICTION**

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

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

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

18 **FIRST CAUSE OF ACTION**

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

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

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

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1           26. 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           27. On November 10, 2015, plaintiff served a sixty-day notice of violation, together  
6 with the requisite certificate of merit, on PLEWS and certain public enforcement agencies  
7 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP,  
8 consumers in the State of California were being exposed to DEHP resulting from their  
9 reasonably foreseeable use of the PRODUCTS, without the consumers first having been  
10 provided with a “clear and reasonable warning” regarding the harms associated with such  
11 exposures, as required by Proposition 65.

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

17           29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
18 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS  
19 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
20 violation.

21           30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
22 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
23 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
24 consumers in California are not exempt from the “clear and reasonable” warning requirements  
25 of Proposition 65, yet DEFENDANTS provide no warning.

26           31. DEFENDANTS knew or should have known that the PRODUCTS they  
27 manufactured, imported, distributed, sell, and offer for sale or use in California contain DEHP.  
28

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

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

6           34.    DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
7 the PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

8           35.    DEFENDANTS intended that exposures to DEHP from the reasonably  
9 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation  
10 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or  
11 use to consumers in California.

12          36.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
13 consumers in California who were or who would become exposed to DEHP through dermal  
14 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

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1 **PRAYER FOR RELIEF**

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

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

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

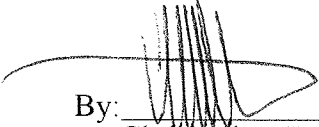
11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
13 currently in the chain of commerce in California without a “clear and reasonable warning” as  
14 defined by California Code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

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

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

17  
18 Dated: February 4, 2016

Respectfully Submitted,  
THE CHANLER GROUP

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20  
21 By:   
22 Christopher Tuttle  
23 Attorneys for Plaintiff  
24 DR. WHITNEY R. LEEMAN  
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