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ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 22 2016

CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

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

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

13 Plaintiff,

14 v.

15 CW INTERNATIONAL SALES LLC;
16 CRYSTALWARE INT'L LLC; and DOES 1-
150, inclusive,

17 Defendants.

Case No. CGC 16-551059

**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 gloves sold by defendants
6 in 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 vinyl/PVC gloves that are 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 vinyl/PVC gloves that defendants
15 manufacture, distribute, and offer for sale without a warning to consumers throughout the State
16 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).

27 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
28 hazard warnings in California, vinyl/PVC gloves, including, but not limited to, the *Sterex Vinyl*

1 Powder Free Gloves, VGPCPFGS, UPC #8 15797 01058 9. All such vinyl/PVC gloves
2 containing DEHP are referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers in the State of California of the health
4 hazards associated with exposures to DEHP in conjunction with defendants' sales of the
5 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
7 § 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 consumers of the PRODUCTS with
10 the required warning regarding the health hazards associated with exposures to DEHP. Health
11 & 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 for their violations 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 toxic exposures from consumer products; and she brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant CW International Sales LLC ("CW INTERNATIONAL") is a person
20 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

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

26 13. Defendant CRYSTALWARE INT'L LLC ("CRYSTALWARE") is a person in
27 the course of doing business within the meaning of Health and Safety Code sections 25249.6
28 and 25249.11.

1 14. CRYSTALWARE manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code sections
7 25249.6 and 25249.11.

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

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

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

18 19. 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 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
22 State of California.

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, 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.
28

1 28. 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 29. On December 29, 2015, plaintiff served a sixty-day notice of violation, together
6 with the requisite certificate of merit, on CW INTERNATIONAL, CRYSTALWARE, and the
7 requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
8 PRODUCTS containing DEHP, consumers in the State of California were being exposed to
9 DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without the
10 consumers first having been provided with a “clear and reasonable warning” regarding the
11 harms associated with such exposures, as required by Proposition 65.

12 30. DEFENDANTS have manufactured, imported, distributed, sold, and offered the
13 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
14 DEFENDANTS’ violations have continued beyond their receipt of plaintiff’s sixty-day notice
15 of violation. DEFENDANTS’ violations are ongoing and continuous in nature, and, as such,
16 will continue in the future.

17 31. 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 32. 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 33. 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.
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1 34. 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 35. 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 36. 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 37. 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 38. 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 39. 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 40. 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 41. 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.
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18 Dated: March 17, 2016

19 Respectfully Submitted,
20 THE CHANLER GROUP

21 By: 

22 Christopher Tuttle
23 Attorneys for Plaintiff
24 WHITNEY R. LEEMAN, PH.D.
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