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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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

14 WHITNEY R. LEEMAN, PH.D.,

15 Plaintiff,

16 v.

17 ELECTROLUX NORTH AMERICA, INC.;
18 ELECTROLUX HOME PRODUCTS, INC.;
19 and DOES 1-150, inclusive,

20 Defendants.

Case No. **CGC 16-551062**

**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 vacuums with vinyl/PVC hoses sold
6 by defendants 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 vacuums with vinyl/PVC hoses that are manufactured, distributed, and offered for sale or use
11 to consumers and other individuals throughout the State of California. Individuals not covered
12 by 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 vacuums with vinyl/PVC hoses
15 that 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).

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

1 *Eureka Airspeed Ultra Multicyclonic Vacuum (Hose), Model AS4008, UPC #0 23169 13954 1.*

2 All such vacuums with vinyl/PVC hoses containing DEHP are referred to collectively
3 hereinafter as “PRODUCTS.”

4 7. Defendants’ failure to warn consumers in the State of California of the health
5 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
8 § 25249.7(a) & (b)(1).

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

13 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
14 penalties against defendants for their violations of Proposition 65.

15 **PARTIES**

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

20 11. Defendant Electrolux North America, Inc. (“ELECTROLUX NORTH
21 AMERICA”) is a person in the course of doing business within the meaning of Health and
22 Safety Code sections 25249.6 and 25249.11.

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

1 13. Defendant Electrolux Home Products, Inc. (“ELECTROLUX HOME
2 PRODUCTS”) is a person in the course of doing business within the meaning of Health and
3 Safety Code sections 25249.6 and 25249.11.

4 14. ELECTROLUX HOME PRODUCTS manufactures, imports, distributes, sells,
5 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct
6 that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
7 the 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
28 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis

1 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
2 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

3 22. ELECTROLUX NORTH AMERICA, ELECTROLUX HOME PRODUCTS,
4 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER
5 DEFENDANTS shall, where appropriate, collectively be referred to as “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

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

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

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

23 **FIRST CAUSE OF ACTION**

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

25 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 25, inclusive.

27 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
28 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

3 28. 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 29. On December 29, 2015, plaintiff served a sixty-day notice of violation, together
8 with the requisite certificate of merit, on ELECTROLUX NORTH AMERICA, ELECTROLUX
9 HOME PRODUCTS, and the requisite public enforcement agencies alleging that, as a result of
10 DEFENDANTS’ sales of the PRODUCTS containing DEHP, consumers in the State of
11 California were being exposed to DEHP resulting from their reasonably foreseeable use of the
12 PRODUCTS, without the consumers first having been provided with a “clear and reasonable
13 warning” regarding the harms associated with such exposures, as required by Proposition 65.

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

19 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
20 agencies have 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 32. 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.

28

1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufactured, imported, distributed, sell, and offer for sale or use in California contain DEHP.

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

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

8 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
9 the PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

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

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

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

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

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

28

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;

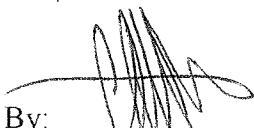
11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a “clear and reasonable warning” as
14 defined by California Code of Regulations 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: March 17, 2016

Respectfully Submitted,
THE CHANLER GROUP

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