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MAR 17 2016

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Hernandez, Deputy

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

WHITNEY R. LEEMAN, PH.D.

Plaintiff,

v.

GENESCO INC.; HAT WORLD, INC.;  
LIDS CORPORATION; and DOES 1-150,  
inclusive,

Defendants.

Case No. CIV 1600968

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

15 3. Detectable levels of DEHP are found in and on the hat luggage cases with  
16 vinyl/PVC shoulder straps that defendants manufacture, distribute, and offer for sale without a  
17 warning 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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
24 chemical that is known to cause birth defects and other 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(b); Health & Safety Code §§ 25249.8 &  
27 25249.10(b).

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6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, hat luggage cases with vinyl/PVC shoulder straps containing DEHP including, but not limited to *Lids Luggage, Item 20326157-990, UPC #4 02023 33297 5*. All hat luggage cases with vinyl/PVC shoulder straps containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

**PARTIES**

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

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

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

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

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

7           15. Defendant LIDS CORPORATION (“LIDS”) is a person in the course of doing  
8 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

9           16. LIDS manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
10 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
11 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

12           17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
13 person in the course of doing business within the meaning of Health and Safety Code sections  
14 25249.6 and 25249.11.

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

19           19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
20 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
21 and 25249.11.

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

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

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1 **FIRST CAUSE OF ACTION**

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

3 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 27, inclusive.

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

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

13 31. On December 29, 2015, plaintiff served a sixty-day notice of violation, together  
14 with the requisite certificate of merit, on GENESCO, HAT WORLD, LIDS, and certain public  
15 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS  
16 containing DEHP, consumers in the State of California were being exposed to DEHP resulting  
17 from their reasonably foreseeable use of the PRODUCTS, without the consumers first having  
18 been provided with a “clear and reasonable warning” regarding the harms associated with such  
19 exposures, as required by Proposition 65.

20 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
23 DEFENDANTS’ violations are ongoing and continuous in nature and, as such, will continue in  
24 the future.

25 33. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
26 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
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1 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of  
2 violation.

3 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
6 consumers in California are not exempt from the "clear and reasonable" warning requirements  
7 of Proposition 65, yet DEFENDANTS provide no warning.

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

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

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

15 38. DEFENDANTS know that the normal and reasonably foreseeable use of the  
16 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

17 39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
18 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
19 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
20 consumers in California.

21 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
22 consumers in California who were or who would become exposed to DEHP through dermal  
23 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

9 **PRAYER FOR RELIEF**

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

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

14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
16 offering the PRODUCTS for sale or use in California without first providing a “clear and  
17 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
18 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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


24 5. That the Court grant such other and further relief as may be just and proper.  
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Dated: March 17, 2016

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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WHITNEY R. LEEMAN, PH.D.