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ENDORSED
FILED
Superior Court of California
County of San Francisco
MAR 22 2016
CLERK OF THE COURT
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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 HD SUPPLY HOLDINGS, INC.; HDS
16 HOLDING CORPORATION; HD SUPPLY,
17 INC.; HD SUPPLY HOLDINGS, LLC; HD
SUPPLY REPAIR & REMODEL, LLC; and
DOES 1-150, inclusive,
18 Defendants.

Case No. **CGC 16-551061**
**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 knee pads with vinyl/PVC
6 components sold 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 knee pads with vinyl/PVC components that are manufactured, distributed, and offered for
11 sale or use to consumers and other individuals throughout the State of California. Individuals
12 not covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq.
13 who purchase, use or handle defendants’ products are referred to hereinafter as “consumers”.

14 3. Detectable levels of DEHP are found in and on knee pads with vinyl/PVC
15 components that defendants manufacture, distribute, and offer for sale without a warning to
16 consumers 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, knee pads with vinyl/PVC components, including, but not

1 limited to, the *Comfort Grip Knee Pads, SKU 446971, UPC #4 00004 46971 9*. All such knee
2 pads with vinyl/PVC components containing DEHP are referred to collectively hereinafter as
3 “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 HD Supply Holdings, Inc. (“HD SUPPLY HOLDINGS, INC.”) is a
21 person in the course of doing business within the meaning of Health and Safety Code sections
22 25249.6 and 25249.11.

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

1 13. Defendant HDS Holding Corporation (“HDS HOLDING”) is a person in the
2 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

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

8 15. Defendant HD Supply Inc. (“HD SUPPLY”) is a person in the course of doing
9 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

14 17. Defendant HD Supply Holdings, LLC (“HD SUPPLY HOLDINGS, LLC”) is a
15 person in the course of doing business within the meaning of Health and Safety Code sections
16 25249.6 and 25249.11.

17 18. HD SUPPLY HOLDINGS, LLC manufactures, imports, distributes, sells, and/or
18 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
19 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
20 State of California.

21 19. Defendant HD Supply Repair and Remodel, LLC (“HD SUPPLY REPAIR &
22 REMODEL”) is a person in the course of doing business within the meaning of Health and
23 Safety Code sections 25249.6 and 25249.11.

24 20. HD SUPPLY REPAIR & REMODEL manufactures, imports, distributes, sells,
25 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct
26 that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
27 the State of California.
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1 21. 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 22. 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 23. 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 24. 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 25. 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 26. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

19 27. 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 28. HD SUPPLY HOLDINGS, INC., HDS HOLDING, HD SUPPLY, HD SUPPLY
25 HOLDINGS, LLC, HD SUPPLY REPAIR & REMODEL, MANUFACTURER
26 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
27 where appropriate, collectively be referred to as “DEFENDANTS.”
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VENUE AND JURISDICTION

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

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

32. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 31, inclusive.

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

34. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . . ” Health & Safety Code § 25249.6.

3 35. On December 29, 2015, plaintiff served a sixty-day notice of violation, together
4 with the requisite certificate of merit, on HD SUPPLY HOLDINGS, INC., HDS HOLDING,
5 HD SUPPLY, HD SUPPLY HOLDINGS, LLC, HD SUPPLY REPAIR & REMODEL, and the
6 requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
7 PRODUCTS containing DEHP, consumers in the State of California were being exposed to
8 DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without the
9 consumers first having been provided with a “clear and reasonable warning” regarding the
10 harms associated with such exposures, as required by Proposition 65.

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

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

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

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

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

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

4 42. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
5 the PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

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

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

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

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

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

24 **PRAYER FOR RELIEF**

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

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

1 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
3 offering the PRODUCTS for sale or use in California without first providing a “clear and
4 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
5 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

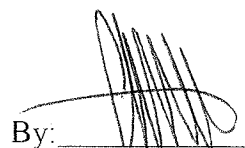
10 4. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

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13 Dated: March 17, 2016

Respectfully Submitted,
THE CHANLER GROUP

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16 By: _____


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