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ENDORSED
FILED
ALAMEDA COUNTY

FEB 28 2017

CLERK OF THE SUPERIOR COURT
By *Jamie Thomas*
JAMIE THOMAS, Deputy

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

MICHAEL DIPIRRO,
Plaintiff,

v.

HARLAND CLARKE CORP.; CHECKS IN
THE MAIL, INC.; and DOES 1-150, inclusive,
Defendants.

Case No. RG 16841465

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code. § 25249.6 *et seq.*)

BY FAX

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint (“Complaint”) is a representative action brought
3 by plaintiff MICHAEL DIPIRRO in the public interest of the citizens of the State of California to
4 enforce the People’s right to be informed of the presence of Di(2-ethylhexyl)phthalate (“DEHP”)
5 and Diisononyl phthalate (“DINP”), toxic chemicals found in checkbook covers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP and DINP present in the
8 checkbook covers manufactured, distributed, and offered for sale or use to consumers
9 throughout the state of California.

10 3. High levels of DEHP and DINP are commonly found in and on the checkbook
11 covers that defendants manufacture, distribute, and offer for sale to consumers throughout the
12 state of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual” (Health & Safety Code § 25249.6.)

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause cancer, and birth defects and other reproductive harm.
20 DEHP became subject to the “clear and reasonable warning” requirements of the act one year
21 later on October 24, 2004. (27 Cal. Code Regs. § 27001(c); Health & Safety Code §§ 25249.8
22 & 25249.10(b).) On December 20, 2013, California identified and listed DINP as a chemical
23 known to cause cancer. DINP became subject to the “clear and reasonable warning”
24 requirements of the act one year later on December 20, 2014. (27 Cal. Code Regs. § 27001(c);
25 Health & Safety Code §§ 25249.8 & 25249.10(b).) DEHP and DINP are referred to hereinafter
26 as the “LISTED CHEMICALS.”
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1 12. HARLAND CLARKE manufactures, distributes, and/or offers the PRODUCTS
2 for sale or use in the state of California, or implies by its conduct that it manufactures,
3 distributes, and/or offers the PRODUCTS for sale or use in the state of California.

4 13. Defendant CHECKS IN THE MAIL, INC. (“CHECKS IN THE MAIL”) is a
5 person in the course of doing business within the meaning of Health and Safety Code section
6 25249.11.

7 14. CHECKS IN THE MAIL manufactures, distributes, and/or offers the PRODUCTS
8 for sale or use in the state of California, or implies by its conduct that it manufactures,
9 distributes, and/or offers the PRODUCTS for sale or use in the state of California.

10 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
11 person in the course of doing business within the meaning of Health and Safety Code section
12 25249.11.

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

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

19 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
20 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
21 in the state of California.

22 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
23 the course of doing business within the meaning of Health and Safety Code section 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
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1 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
2 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
3 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

4 22. HARLAND CLARKE, CHECKS IN THE MAIL, MANUFACTURER
5 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
6 where appropriate, collectively be referred to as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

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

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

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

9 29. On April 12, 2016, plaintiff’s sixty-day notice of violation, together with the
10 requisite certificate of merit, was provided to Defendant CHECKS IN THE MAIL, and certain
11 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
12 PRODUCTS containing the LISTED CHEMICAL DEHP, purchasers and users in the state of
13 California were being exposed to the LISTED CHEMICAL DEHP resulting from the
14 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
15 first having been provided with a “clear and reasonable warning” regarding such toxic
16 exposures, as required by Proposition 65.

17 30. On July 27, 2016, plaintiff’s sixty-day notice of violation, together with the
18 requisite certificate of merit, was provided to Defendant HARLAND CLARKE, and certain
19 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
20 PRODUCTS containing the LISTED CHEMICAL DINP, purchasers and users in the state of
21 California were being exposed to the LISTED CHEMICAL DINP resulting from the reasonably
22 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
23 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
24 required by Proposition 65.

25 31. DEFENDANTS have engaged in the manufacture, distribution, and offering of
26 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
27 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
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1 notices of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
2 and will continue to occur in the future.

3 32. After receiving the claims asserted in the sixty-day notices of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a
5 cause of action against DEFENDANTS under Proposition 65.

6 33. The PRODUCTS manufactured, distributed, and offered for sale or use in
7 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the
8 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
9 65.

10 34. DEFENDANTS knew or should have known that the PRODUCTS they
11 manufacture, distribute, and offer for sale or use in California contain the LISTED
12 CHEMICALS.

13 35. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
14 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
15 use.

16 36. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
17 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
18 defined by California Code of Regulations title 27, section 25602(b).

19 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
20 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact,
21 and/or ingestion.

22 38. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
23 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
24 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
25 sale or use to individuals in the state of California.

26 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and other individuals in the state of California who were or who would become
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1 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
2 reasonably foreseeable uses of the PRODUCTS.

3 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
4 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal
5 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
6 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
7 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

11 42. As a consequence of the above-described acts, Health and Safety Code
12 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

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

18 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
19 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
20 offering the PRODUCTS for sale or use in California without first providing a “clear and
21 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
22 *seq.*, as to the harms associated with exposures to the LISTED CHEMICALS;

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

24 4. That the Court grant such other and further relief as may be just and proper.
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Dated: February 27, 2017

Respectfully Submitted,
BUSH & HENRY

By: 

Jennifer Henry
Attorneys for Plaintiff
MICHAEL DIPIRRO