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**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 08 2017

CLERK OF THE SUPERIOR COURT
By *[Signature]*
JANNE THOMAS, Deputy

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

MICHAEL DIPIRRO,

Plaintiff,

v.

CHECKWORKS, INC. and DOES 1-150,
inclusive,

Defendants.

Case No. RG17863289

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MICHAEL
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of Diisononyl phthalate (“DINP”) and Di-isodecyl phthalate
5 (“DIDP”), toxic chemicals found in checkbook covers and vinyl pouches 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 DINP and/or DIDP present in the
8 checkbook covers and vinyl pouches manufactured, distributed, and offered for sale or use to
9 consumers throughout the state of California.

10 3. High levels of DINP and/or DIDP are commonly found in and on the checkbook
11 covers and vinyl pouches that defendants manufacture, distribute, and offer for sale to
12 consumers throughout the 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 December 20, 2013, California identified and listed
19 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
20 warning” requirements of the act one year later on December 20, 2014. (27 Cal. Code Regs. §
21 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

22 6. Pursuant to Proposition 65, on April 20, 2007, California identified and listed
23 DIDP as a chemical known to cause birth defects or other reproductive harm. DIDP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on April 20,
25 2008. (27 Cal. Code Regs. § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).) DINP
26 and DIDP are referred to hereinafter as the “LISTED CHEMICALS.”

1 7. Defendants manufacture, distribute, and sell checkbook covers and vinyl pouches,
2 including, but not limited to, *Vinyl Black Checkbook Cover*, *Blue Vinyl Checkbook Cover for*
3 *1Up/Estate Business Checks* (#62810490593), and *Vinyl Security Pouch for 7-Ring Binder*
4 (*#62810490590*), that contain DINP and/or DIDP in levels that require a warning under
5 Proposition 65. All such checkbook covers and vinyl pouches containing DINP and/or DIDP
6 are referred to collectively hereinafter as “PRODUCTS.”

7 8. Defendants’ failure to warn consumers and other individuals in the state of
8 California about their exposure to the LISTED CHEMICALS in conjunction with defendants’
9 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to
10 enjoyment of such conduct as well as civil penalties for each violation. (Health & Safety
11 Code § 25249.7(a) & (b)(1).)

12 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
13 permanent injunctive relief to compel defendants to provide purchasers or users of the
14 PRODUCTS with the required warning regarding the health hazards of the LISTED
15 CHEMICALS. (Health & Safety Code § 25249.7(a).)

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

PARTIES

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19 11. Plaintiff MICHAEL DIPIRRO is a citizen of the state of California who is
20 dedicated to protecting the health of California citizens through the elimination or reduction of
21 toxic exposures from consumer products; and he brings this action in the public interest
22 pursuant to Health and Safety Code section 25249.7(d).

23 12. Defendant CHECKWORKS, INC. (“CHECKWORKS”) is a person in the course
24 of doing business within the meaning of Health and Safety Code section 25249.11.

25 13. CHECKWORKS manufactures, distributes, and/or offers the PRODUCTS for sale
26 or use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
27 offers the PRODUCTS for sale or use in the state of California.

1 14. 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 section
3 25249.11.

4 15. 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 16. 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 section 25249.11.

10 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
11 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
12 in the state of California.

13 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
14 the course of doing business within the meaning of Health and Safety Code section 25249.11.

15 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
16 state of California.

17 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are
18 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
19 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
20 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
21 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

22 21. CHECKWORKS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
23 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
24 referred to as “DEFENDANTS.”

25 **VENUE AND JURISDICTION**

26 22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
27 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
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1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 county with respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 24, inclusive.

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

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

26 28. On April 12, 2016, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to CHECKWORKS, and certain public enforcement
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1 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
2 LISTED CHEMICALS, purchasers and users in the state of California were being exposed to
3 the LISTED CHEMICALS resulting from the reasonably foreseeable uses of the PRODUCTS,
4 without the individual purchasers and users first having been provided with a “clear and
5 reasonable warning” regarding such toxic exposures, as required by Proposition 65. On
6 December 9, 2016, plaintiff’s supplemental sixty-day notice of violation, together with the
7 requisite certificate of merit, was provided to CHECKWORKS, and certain public enforcement
8 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
9 LISTED CHEMICALS, purchasers and users in the state of California were being exposed to
10 the LISTED CHEMICALS resulting from the reasonably foreseeable uses of the PRODUCTS,
11 without the individual purchasers and users first having been provided with a “clear and
12 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

13 29. DEFENDANTS have engaged in the manufacture, distribution, and offering of
14 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
15 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
16 notices of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
17 and will continue to occur in the future.

18 30. After receiving the claims asserted in the sixty-day notice of violation, the
19 appropriate public enforcement agencies have failed to commence and diligently prosecute a
20 cause of action against DEFENDANTS under Proposition 65.

21 31. The PRODUCTS manufactured, distributed, and offered for sale or use in
22 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the
23 allowable state limits, such that they require a “clear and reasonable warning” under Proposition
24 65.

25 32. DEFENDANTS knew or should have known that the PRODUCTS they
26 manufacture, distribute, and offer for sale or use in California contain the LISTED
27 CHEMICALS.

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1 33. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
2 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
3 use.

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

7 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
8 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact,
9 and/or ingestion.

10 36. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
11 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
12 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
13 sale or use to individuals in the state of California.

14 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in the state of California who were or who would become
16 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
17 reasonably foreseeable uses of the PRODUCTS.

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

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

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1 40. As a consequence of the above-described acts, Health and Safety Code
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

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

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


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

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

14 4. That the Court grant such other and further relief as may be just and proper.

15 Dated: June 7, 2017

16 Respectfully Submitted,
BUSH & HENRY

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18 By: 
19 Jennifer Henry
20 Attorneys for Plaintiff
MICHAEL DIPIRRO