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ENDORSED
FILED
ALAMEDA COUNTY

DEC 07 2016

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

Attorneys for Plaintiff
Michael DiPirro

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

MICHAEL DIPIRRO,
Plaintiff,

v.

HARLAND CLARKE CORP.; HARLAND
CLARKE CORP., DBA CHECKS IN THE
MAIL; WAL-MART STORES, INC., DBA
WALMART.COM, DBA
WALMARTCHECKS.COM; VISTAPRINT
CORPORATE SOLUTIONS
INCORPORATED; and DOES 1-150,
inclusive,
Defendants.

Case No. RB-15842465

**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 Di(2-ethylhexyl)phthalate (“DEHP”) and Diisononyl
5 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 13. Defendant HARLAND CLARKE CORP., DBA CHECKS IN THE MAIL
2 (“CHECKS IN THE MAIL”) is a person in the course of doing business within the meaning of
3 Health and Safety Code section 25249.11.

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

7 15. Defendant WAL-MART STORES, INC., DBA WALMART.COM, DBA
8 WALMARTCHECKS.COM (“WAL-MART”) is a person in the course of doing business
9 within the meaning of Health and Safety Code section 25249.11.

10 16. WAL-MART manufactures, distributes, and/or offers the PRODUCTS for sale or
11 use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
12 offers the PRODUCTS for sale or use in the state of California.

13 17. Defendant VISTAPRINT CORPORATE SOLUTIONS INCORPORATED
14 (“VISTAPRINT”) is a person in the course of doing business within the meaning of Health and
15 Safety Code section 25249.11.

16 18. VISTAPRINT manufactures, distributes, and/or offers the PRODUCTS for sale or
17 use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
18 offers the PRODUCTS for sale or use in the state of California.

19 19. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
20 person in the course of doing business within the meaning of Health and Safety Code section
21 25249.11.

22 20. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
23 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
24 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
25 California.

26 21. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
27 in the course of doing business within the meaning of Health and Safety Code section 25249.11.
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1 association that is a citizen of the state of California, has sufficient minimum contacts in the
2 state of California, and/or otherwise purposefully avails itself of the California market.
3 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 29, inclusive.

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

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

17 33. On April 12, 2016, plaintiff’s sixty-day notice of violation, together with the
18 requisite certificate of merit, was provided to Defendants CHECKS IN THE MAIL and WAL-
19 MART, and certain public enforcement agencies stating that, as a result of DEFENDANTS’
20 sales of the PRODUCTS containing the LISTED CHEMICAL DEHP, purchasers and users in
21 the state of California were being exposed to the LISTED CHEMICAL DEHP resulting from
22 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
23 first having been provided with a “clear and reasonable warning” regarding such toxic
24 exposures, as required by Proposition 65.

25 34. On July 27, 2016, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to Defendants HARLAND CLARKE and
27 VISTAPRINT, and certain public enforcement agencies stating that, as a result of
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1 DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL DINP,
2 purchasers and users in the state of California were being exposed to the LISTED CHEMICAL
3 DINP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
4 purchasers and users first having been provided with a “clear and reasonable warning”
5 regarding such toxic exposures, as required by Proposition 65.

6 35. DEFENDANTS have engaged in the manufacture, distribution, and offering of
7 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
8 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
9 notices of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
10 and will continue to occur in the future.

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

14 37. The PRODUCTS manufactured, distributed, and offered for sale or use in
15 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the
16 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
17 65.

18 38. DEFENDANTS knew or should have known that the PRODUCTS they
19 manufacture, distribute, and offer for sale or use in California contain the LISTED
20 CHEMICALS.

21 39. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
22 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
23 use.

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

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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” as defined by California Code of Regulations title 27, section 25601 *et*
5 *seq.*, as to the harms associated with exposures to the LISTED CHEMICALS;

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

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

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9 Dated: December 6, 2016

Respectfully Submitted,
BUSH & HENRY

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11 By:  _____
12 Jennifer Henry
13 Attorneys for Plaintiff
14 MICHAEL DIPIRRO
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