

1 **NICHOLAS & TOMASEVIC, LLP**

2 Craig M. Nicholas (SBN 178444)

3 Shan Markley (SBN 291785)

4 225 Broadway, 19th Floor

5 San Diego, California 92101

6 Tel: (619) 325-0492

7 Fax: (619) 325-0496

8 **GLICK LAW GROUP, PC**

9 Noam Glick (SBN 251582)

10 225 Broadway, Suite 2100

11 San Diego, California 92101

12 Tel: (619) 382-3400

13 Fax: (619) 615-2193

14 Attorneys for Plaintiff

15 Arthur Zivkovic

ENDORSED
FILED
Superior Court of California
County of San Francisco

LIC 192016

CLERK OF THE COURT

BY KAREN APOLONIO
Deputy Clerk

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

18 ARTHUR ZIVKOVIC, an individual

19 Plaintiff,

20 v.

21 PLEWS, INC. d/b/a PLEWS & EDELMANN,
22 a Delaware corporation

23 Defendant.

Case No.: **CGC-16-555986**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Plaintiff in the public interest of
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the
4 presence of di(2-ethylhexyl) phthalate (“DEHP”) and Diisononyl phthalate (“DINP”) (collectively
5 “Listed Chemicals”) found in Amflo Day Glow Orange PVC Air Hoses manufactured, imported, sold,
6 or distributed for sale in California by Defendant.

7 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
8 Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
9 business shall knowingly and intentionally expose any individual to a chemical known to the state to
10 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
11 individual. . . .” (Cal. Health & Safety Code § 25249.6.)

12 3. California identified and listed DEHP as a chemical known to cause birth defects or
13 other reproductive harm as well as cancer as early as January 1, 1988. Likewise, California identified
14 and listed DINP as a chemical known to cause cancer as early as December 20, 2013.

15 4. Amflo Day Glow Orange PVC Air Hoses manufactured, imported, sold, or distributed
16 in California contain prohibited levels of Listed Chemicals (“Products”).

17 5. Defendant failed to sufficiently warn consumers and individuals in California about
18 potential exposure to Listed Chemicals in connection with Defendant’s manufacture, import, sale, or
19 distribution of Products. This is a violation of Proposition 65.

20 6. Plaintiff seeks injunctive relief compelling Defendant to provide consumers and
21 individuals in California with sufficient warning pursuant to Proposition 65 and related Regulations.
22 (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for its
23 violations of Proposition 65. (Cal. Health & Safety Code § 25249.7(b).)

II.
PARTIES

24
25 7. Plaintiff is a citizen of the State of California dedicated to protecting the health of
26 California citizens through the elimination or reduction of toxic exposure from consumer products. He
27 brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.
28

1 16. Defendants manufactured, imported, sold, and/or distributed Products containing Listed
2 Chemicals in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed
3 and believes such violations have continued after receipt of the Notice and will continue to occur into
4 the future.

5 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
6 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
7 to the Listed Chemicals through reasonably foreseeable use of the Products.

8 18. The presence of Listed Chemicals in Products exposes individuals to the Listed
9 Chemicals through dermal absorption, ingestion, and inhalation.

10 19. Defendants knew or should have known that the Products contained Listed Chemicals
11 and exposed individuals to Listed Chemicals in the ways provided above.

12 20. Defendants' actions in this regard were deliberate and not accidental.

13 21. On August 10, 2016, Plaintiff provided Defendant a 60-Day Notice of Violation
14 ("Notice") as required by and in compliance with Proposition 65. The Notice was provided to the
15 various required public enforcement agencies and contained a certificate of merit. The Notice alleged
16 that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the
17 health hazards associated with exposures to Listed Chemicals contained in the Products.

18 22. The appropriate public enforcement agencies provided with the Notice failed to
19 commence and diligently prosecute a cause of action against Defendant.

20 23. Individuals exposed to Listed Chemicals contained in the Products through dermal
21 absorption, ingestion, and inhalation resulting from reasonably foreseeable use of the Products have
22 suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy
23 at law.

24 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
25 of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also
26 appropriate pursuant to Health & Safety Code Section 25249.7(a).

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 3 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 4 2. A preliminary and permanent injunction against Defendants from manufacturing,
- 5 importing, selling, and/or distributing Products in California without providing a clear
- 6 and reasonable warning as required by Proposition 65 and related Regulations;
- 7 3. Reasonable attorney's fees and costs of suit; and
- 8 4. Such other and further relief as may be just and proper.
- 9

10 Dated: December 16, 2016

NICHOLAS & TOMASEVIC, LLP

11

12

13 By: 

Craig Nicholas
Shaun Markley

14

15 Attorneys for Plaintiff

16

17

18

19

20

21

22

23

24

25

26

27

28