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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 PETEDGE MASSACHUSETTS BUSINESS
19 TRUST; PETEDGE, INC.; and DOES 1-6,
20 inclusive,

21 Defendants.

22 Case No. PG17847975

23 **COMPLAINT FOR CIVIL PENALTIES
24 AND INJUNCTIVE RELIEF**

25 (Health & Safety Code § 25249.5 *et seq.*)

ENDORSED
FILED
ALAMEDA COUNTY
FEB -2 2017

CLERK OF THE SUPERIOR COURT,
By Lanette Buffin, Deputy

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Russell Brimer in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a
5 toxic chemical found in and on pet waste bag holders sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of
9 exposure to DEHP present in and on the pet waste bag holders manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of DEHP are found in and on the pet waste bag holders that
14 defendants manufacture, distribute, and offer for sale to consumers throughout California.

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

20 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
21 chemical that is known to cause birth defects or other reproductive harm. DEHP became
22 subject to the “clear and reasonable warning” requirements of the act one year later on October
23 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
24 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, pet waste bag holders that contain DEHP including, but not
27 limited to, the *Clean Go Pet Waste Bag Holder Set*, #ZW31390212, UPC #7 21343 41305 9.
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1 All such pet waste bag holders containing DEHP are referred to collectively hereinafter as
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers and other individuals in California of the
4 health hazards associated with exposures to DEHP in conjunction with defendants’ sales of the
5 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
7 § 25249.7(a) & (b)(1).

8 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
10 the required warning regarding the health hazards associated with exposures to DEHP. Health
11 & Safety Code § 25249.7(a).

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

14 **PARTIES**

15 10. Plaintiff RUSSELL BRIMER, is a citizen of the State of California who is
16 dedicated to protecting the health of California citizens through the elimination or reduction of
17 toxic exposures from consumer products; and brings this action in the public interest pursuant to
18 Health and Safety Code section 25249.7(d).

19 11. Defendant PETEDGE MASSACHUSETTS BUSINESS TRUST (“PETEDGE
20 MASS.”) is a person in the course of doing business within the meaning of Health and Safety
21 Code sections 25249.6 and 25249.11.

22 12. PETEDGE MASS. manufactures, imports, distributes, sells, and offers the
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
24 manufactures, imports, distributes, sells, and offers the PRODUCTS for sale or use in the State
25 of California.

26 13. Defendant PETEDGE, INC. (“PETEDGE, INC.”) is a person in the course of
27 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
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1 14. PETEDGE, INC. manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 15. Defendants DOES 1-2 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code sections
7 25249.6 and 25249.11.

8 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
9 assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design,
10 assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in
11 California.

12 17. Defendants DOES 3-4 (“DISTRIBUTOR DEFENDANTS”) are each a person in
13 the course of doing business within the meaning of Health and Safety Code sections 25249.6
14 and 25249.11.

15 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
16 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
17 retailers for sale or use in the State of California, or imply by their conduct that they distribute,
18 exchange, transfer, process, and transport one or more of the PRODUCTS to individuals,
19 businesses, or retailers for sale or use in the State of California.

20 19. Defendants DOES 5-6 (“RETAILER DEFENDANTS”) are each a person in the
21 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
22 25249.11.

23 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
24 individuals in the State of California.

25 21. At this time, the true names of defendants DOES 1 through 6, inclusive, are
26 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
27 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
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1 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
2 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

3 22. PETEDGE MASS., PETEDGE, INC., MANUFACTURER DEFENDANTS,
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where
5 appropriate, be referred to collectively as the “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

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

7 29. On September 7, 2016, plaintiff served a sixty-day notice of violation, together
8 with the accompanying certificate of merit, on PETEDGE MASS., PETEDGE, INC., the
9 California Attorney General, and all other requisite public enforcement agencies alleging that,
10 as a result of DEFENDANTS’ sales of the PRODUCTS, consumers and other individuals in the
11 State of California are being exposed to DEHP resulting from their reasonably foreseeable use
12 of the PRODUCTS, without such consumers and other individuals first receiving a “clear and
13 reasonable warning” regarding the harms associated with exposures to DEHP, as required by
14 Proposition 65.

15 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
16 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
17 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
18 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
19 will continue in the future.

20 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
21 agency has commenced and diligently prosecuted a cause of action against any of the
22 DEFENDANTS to enforce the alleged violations of Proposition 65 that are the subject of
23 plaintiff’s sixty-day notice.

24 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
25 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
26 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
27 consumers in California are not exempt from the “clear and reasonable” warning requirements
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1 of Proposition 65, yet DEFENDANTS provide no clear and reasonable warning.
2 DEFENDANTS violations as a result of their failure to provide warnings to consumers and
3 other individuals exposed to DEHP from the PRODUCTS have continued since as far back as
4 September 7, 2013.

5 33. DEFENDANTS knew or should have known that the PRODUCTS they
6 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

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

9 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
10 continues to cause, consumer exposures to DEHP, as such exposures are defined by title 27 of
11 the California Code of Regulations, section 25602(b).

12 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
13 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

14 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
15 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
16 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
17 consumers and other individuals in California.

18 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
19 consumers and other individuals in California who have been, or who will be, exposed to DEHP
20 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

21 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
22 directly by California voters, consumers exposed to DEHP through dermal contact and/or
23 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear
24 and reasonable” health hazard warning have suffered, and continue to suffer, irreparable harm
25 for which they have no plain, speedy, or adequate remedy at law.
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1 40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
2 above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty
3 of \$2,500 per day for each violation.

4 41. As a consequence of the above-described acts, Health and Safety Code
5 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
6 DEFENDANTS.

7 **PRAYER FOR RELIEF**

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

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

12 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
13 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
14 offering the PRODUCTS for sale or use in California without first providing a “clear and
15 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
16 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

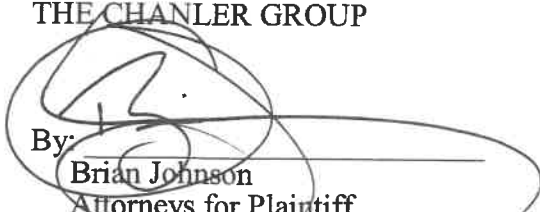
17 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
18 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
19 currently in the chain of commerce in California without a “clear and reasonable warning” as
20 defined by California Code of Regulations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

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

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

23 Dated: February 1, 2017

24 Respectfully submitted,
THE CHANLER GROUP

25 
26 By: _____
27 Brian Johnson
Attorneys for Plaintiff
28 RUSSELL BRIMER