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LAURENCE VINO CUR

F I L E D
Superior Court of California
County of San Francisco

FEB 10 2017

CLERK OF THE COURT

By: Arthur Ramon
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,
Plaintiff,
v.
RUSSELL STOVER CHOCOLATES, LLC,
Defendant.

Case No. **CGC-17-557047**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Laurence Vinocur
3 in 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 vinyl/PVC candy boxes sold by defendant in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant’s 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 defendant’s products, about the risks of
9 exposures to DEHP present in and on the vinyl/PVC candy boxes manufactured, distributed,
10 and 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 vinyl/PVC candy boxes that
14 defendant manufactures, distributes, and offers 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. Defendant manufactures, distributes, imports, sells, and offers for sale without
26 health hazard warnings in California, vinyl/PVC candy boxes that contain DEHP including, but
27 not limited to, the box offered in connection with the *Whitman’s Happy Valentine’s Day*
28

1 *Assorted Chocolates, UPC #0 76740 07235 5.* All such vinyl/PVC candy boxes containing
2 DEHP are referred to collectively hereinafter as “PRODUCTS.”

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

8 8. For defendant’s 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 defendant for its violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff LAURENCE VINOCUR, 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 RUSSELL STOVER CHOCOLATES, LLC, (“RUSSELL STOVER”)
20 is a person in the course of doing business within the meaning of Health and Safety Code
21 sections 25249.6 and 25249.11.

22 12. RUSSELL STOVER 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. RUSSELL STOVER, shall hereinafter, where appropriate, be referred to
27 collectively as the “DEFENDANT.”
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VENUE AND JURISDICTION

14. Venue is proper in the County of San Francisco pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANT, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and because DEFENDANT conducts business in San Francisco with respect to the PRODUCTS.

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

19. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . .” Health & Safety Code § 25249.6.

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

11 21. DEFENDANT manufactures, imports, distributes, sells, and offers the
12 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
13 DEFENDANT’S violations have continued beyond its receipt of plaintiff’s sixty-day notice of
14 violation. As such, DEFENDANT’S violations are ongoing and continuous in nature and,
15 unless enjoined will continue in the future.

16 22. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
17 agency has commenced and diligently prosecuted a cause of action against any of the
18 DEFENDANT to enforce the alleged violations of Proposition 65 that are the subject of
19 plaintiff’s sixty-day notice.

20 23. The PRODUCTS that DEFENDANT manufactures, imports, distributes, sells,
21 and offers for sale or use in California cause exposures to DEHP as a result of the reasonably
22 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANT and endured by
23 consumers in California are not exempt from the “clear and reasonable” warning requirements
24 of Proposition 65, yet DEFENDANT provides no clear and reasonable warning.
25 DEFENDANTS violations as a result of its failure to provide warnings to consumers and other
26 individuals exposed to DEHP from the PRODUCTS have continued since as far back as
27 September 29, 2013.

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1 24. DEFENDANT knew or should have known that the PRODUCTS it manufactures,
2 imports, distributes, sells, and offers for sale in California contain DEHP.

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

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

8 27. DEFENDANT knows that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

10 28. DEFENDANT intends that exposures to DEHP from the reasonably foreseeable
11 use of the PRODUCTS will occur by its deliberate, non-accidental participation in the
12 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
13 consumers and other individuals in California.

14 29. DEFENDANT failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in California who have been, or who will be, exposed to DEHP
16 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

17 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
18 directly by California voters, consumers exposed to DEHP through dermal contact and/or
19 ingestion as a result of their use of the PRODUCTS that DEFENDANT sold without a “clear
20 and reasonable” health hazard warning have suffered, and continue to suffer, irreparable harm
21 for which they have no plain, speedy, or adequate remedy at law.

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

25 32. As a consequence of the above-described acts, Health and Safety Code
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 DEFENDANT.

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

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

5 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
6 preliminarily and permanently enjoin DEFENDANT from manufacturing, distributing, or
7 offering the PRODUCTS for sale or use in California without first providing a “clear and
8 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
9 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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

15 5. That the Court grant such other and further relief as may be just and proper.
16

17 Dated: February 8, 2017

Respectfully submitted,
THE CHANLER GROUP

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20 By 

Brian Johnson
Attorneys for Plaintiff
LAURENCE VINOCUR