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ENDORSED
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ALAMEDA COUNTY

NOV 02 2017

CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BY FAX

EMA BELL,

Plaintiff,

v.

COMPASS HEALTH BRANDS CORP., ACORN DEVELOPMENT COMPANIES, INC., APEX MEDICAL CORP., RITE AID CORP.,

Defendant.

Case No.: RG17868997

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF

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

Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified as the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part, "[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 cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . .". Health & Safety Code § 25249.6.

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health

hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in Carex Cast Protectors manufactured, sold and/or distributed in California by defendants Compass Health Brands Corp. ("Compass Health"), Acorn Development Companies, Inc. ("Acorn"), Apex Medical Corporation ("Carex"), and Rite Aid Corp. ("Rite Aid") (collectively, the "Defendants") in California.

3. DINP is a harmful chemical known to the State of California to cause cancer. On December 20, 2013, the State of California listed DINP as a chemical known to the State to cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

4. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to it.

5. Proposition 65 allows for civil penalties of up to $2,500.00 per day per violation to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate[s] or threaten[s] to violate" the statute. Health & Safety Code § 25249.7.

6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell, and/or offer for sale in California, without the required warning, Carex Cast Protectors ("Product" or "Products"), that contain DINP.

7. Defendants' failure to warn consumers and other individuals in California of the health hazards associated with exposure to DINP in conjunction with the sale, manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the enjoinment and civil penalties described herein.

8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Product with the required warnings related to the dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code § 25249.7(a).

PARTIES

10. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items. He brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Compass Health, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

12. Defendant Acorn, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

13. Defendant Carex, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

14. Defendant Rite Aid, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California

15. Defendant Compass Health, Acorn, Carex and Rite Aid is each a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

16. Venue is proper in the County of Alameda because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendant conducted, and continues to conduct, business in the County of Alameda with respect to the Product.

17. This Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has jurisdiction over this lawsuit.

18. This Court has jurisdiction over Defendant because it is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or has otherwise purposefully availed itself of the California market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

SATISFACTION OF NOTICE REQUIREMNTS

19. On June 28, 2017, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to DINP contained in the Product without proper warning, subject to a private action to Defendants and to the California Attorney General's office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

20. The Notice complied with all procedural requirements of Proposition 65 including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private action.

21. After receiving the Notice, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged violations which are the subject of Plaintiff's notice of violation.

22. Plaintiff is commencing this action more than sixty (60) days from the date of the Notice to Defendants, as required by law.

FIRST CAUSE OF ACTION

(By Plaintiff against Defendant for the Violation of Proposition 65)

23. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 22 of this complaint as though fully set forth herein.

24. Defendants have, at all times mentioned herein, acted as manufacturer, distributer, and/or retailer of the Product.

25. The Product contains DINP, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

26. The Product does not comply with the Proposition 65 warning requirements.

27. Plaintiff, based on her best information and belief, avers that at all relevant times herein, and at least since May 31, 2017, continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Product to DINP without providing required warnings under Proposition 65.

28. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users may potentially be exposed to DINP by dermal absorption through direct handling of the PVC body during fitting and removal of the cast protector on the lower leg. Dermal exposure to DINP from the cast protector is possible through exposed skin on the lower leg contained in the boot. An enclosed cast or bandage can also become contaminated with DINP and the cast or bandage can subsequently transfer DINP tot eh user's skin. If the PVC becomes wet during its expected use in the shower or bath, or is handled with wet hands, aqueous HMWP skin permeation rates have been reported

to be faster than neat HMWP permeation. The product can be expected to emit gas phase DINP into the air and accumulate DINP at the surface of the item over the lifetime of the product. If the cast protector is stored or transported in a carrier, DINP that leaches from the PVC body may contaminate other articles contained within the storage area or carrier that are subsequently handled, worn, mouthed, or ingested by the user. Finally, some amount of exposure through ingestion can occur by handling the product with subsequent touching of the user's hand to mouth.

29. Plaintiff, based on her best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to Product purchasers and users or until this known toxic chemical is removed from the Product.

30. Defendants have knowledge that the normal and reasonably foreseeable use of the Product exposes individuals to DINP, and Defendants intend that exposures to DINP will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Product to consumers in California

31. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this Complaint.

32. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above described acts, Defendants are liable for a maximum civil penalty of $2,500 per day per violation.

33. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants and requests the following relief:

A. That the court assess civil penalties against Defendants in the amount of $2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);

B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Product;

C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.

D. That the court grant any further relief as may be just and proper.

Dated: November 1, 2017

BRODSKY & SMITH, LLC

By: _____

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F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: **Case Number:**

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

[ ] Oakland, Rene C. Davidson Alameda County Courthouse (446)

[ ] Hayward Hall of Justice (447)

[ ] Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)			
Auto Tort	Auto tort (22)	[ ]	34	Auto tort (G) **Is this an uninsured motorist case? [ ] yes [ ] no**	
Other PI /PD / WD Tort	Asbestos (04)	[ ]	75	Asbestos (D)	
	Product liability (24)	[ ]	89	Product liability (not asbestos or toxic tort/environmental) (G)	
	Medical malpractice (45)	[ ]	97	Medical malpractice (G)	
	Other PI/PD/WD tort (23)	[ ]	33	Other PI/PD/WD tort (G)	
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	[ ]	79	Bus tort / unfair bus. practice (G)	
	Civil rights (08)	[ ]	80	Civil rights (G)	
	Defamation (13)	[ ]	84	Defamation (G)	
	Fraud (16)	[ ]	24	Fraud (G)	
	Intellectual property (19)	[ ]	87	Intellectual property (G)	
	Professional negligence (25)	[ ]	59	Professional negligence - non-medical (G)	
	Other non-PI/PD/WD tort (35)	[ ]	03	Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36)	[ ]	38	Wrongful termination (G)	
	Other employment (15)	[ ]	85	Other employment (G)	
		[ ]	53	Labor comm award confirmation	
		[ ]	54	Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06)	[ ]	04	Breach contract / Wrnty (G)	
	Collections (09)	[ ]	81	Collections (G)	
	Insurance coverage (18)	[ ]	86	Ins. coverage - non-complex (G)	
	Other contract (37)	[ ]	98	Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14)	[ ]	18	Eminent domain / Inv Cdm (G)	
	Wrongful eviction (33)	[ ]	17	Wrongful eviction (G)	
	Other real property (26)	[ ]	36	Other real property (G)	
Unlawful Detainer	Commercial (31)	[ ]	94	Unlawful Detainer - commercial	**Is the deft. in possession**
	Residential (32)	[ ]	47	Unlawful Detainer - residential	**of the property?**
	Drugs (38)	[ ]	21	Unlawful detainer - drugs	**[ ] Yes [ ] No**
Judicial Review	Asset forfeiture (05)	[ ]	41	Asset forfeiture	
	Petition re: arbitration award (11)	[ ]	62	Pet. re: arbitration award	
	Writ of Mandate (02)	[ ]	49	Writ of mandate	
		Is this a CEQA action (Publ.Res.Code section 21000 et seq) [ ] Yes [ ] No			
	Other judicial review (39)	[ ]	64	Other judicial review	
Provisionally Complex	Antitrust / Trade regulation (03)	[ ]	77	Antitrust / Trade regulation	
	Construction defect (10)	[ ]	82	Construction defect	
	Claims involving mass tort (40)	[ ]	78	Claims involving mass tort	
	Securities litigation (28)	[ ]	91	Securities litigation	
	Toxic tort / Environmental (30)	[ ]	93	Toxic tort / Environmental	
	Ins covrg from cmplx case type (41)	[ ]	95	Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	[ ]	19	Enforcement of judgment	
		[ ]	08	Confession of judgment	
Misc Complaint	RICO (27)	[ ]	90	RICO (G)	
	Partnership / Corp. governance (21)	[ ]	88	Partnership / Corp. governance (G)	
	Other complaint (42)	[ ]	68	All other complaints (G)	
Misc. Civil Petition	Other petition (43)	[ ]	06	Change of name	
		[ ]	69	Other petition	