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ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
10/06/2022 at 04:33:47 PM
By: Angela Linhares,
Deputy Clerk

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13
14 MICHAEL DIPIRRO,

15 Plaintiff,

16 v.

17 UNITED PACIFIC INDUSTRIES, INC; and
18 DOES 1-150,

19 Defendants.

Case No. **22CV019163**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code, § 25249.6 *et seq.*)

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 Diethylhexyl phthalate (“DEHP”), a toxic chemical, for
5 exposures created by the use of arm rests sold in California, including but not limited to the
6 *Universal Burgundy Padded Vinyl Arm Rest, Item #90255*.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to DEHP from the use of the arm rests that
9 are manufactured, distributed, and/or offered for sale or use to consumers throughout the State
10 of California without the requisite health hazard warnings.

11 3. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
12 warn California citizens about the risk of exposure to DEHP in arm rests that are manufactured,
13 distributed, and/or offered for sale or use to consumers throughout the State of California.

14 4. Exposure to high levels of DEHP are commonly produced through the normal and
15 foreseeable use of arm rests that defendants manufacture, distribute, and/or offer for sale to
16 consumers throughout the State of California without requisite health hazard warnings.

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

22 6. Pursuant to Proposition 65, on January 1, 1988, California identified and listed
23 DEHP as a chemical known to cause cancer. DEHP became subject to the “clear and
24 reasonable warning” requirements of the act one year later on January 1, 1988, for cancer. On
25 October 24, 2003, California identified and listed DEHP as a chemical known to cause
26 developmental toxicity (male). DEHP became subject to the “clear and reasonable warning”
27 requirements of the act one year later on October 24, 2004, for developmental toxicity (male).
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1 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is
2 referred to hereinafter as the “LISTED CHEMICAL.”

3 7. Defendants manufacture or otherwise process for sale, distribute, and sell arm
4 rests including, but not limited to the *Universal Burgundy Padded Vinyl Arm Rest, Item #90255*,
5 the normal and foreseeable use of which results in exposure to DEHP at levels that require
6 health hazard warnings under Proposition 65. All such arm rests are referred to collectively
7 hereinafter as the “PRODUCTS.”

8 8. Defendants’ failure to warn consumers and other individuals in the State of
9 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
10 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
11 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
12 & (b)(1).

13 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
14 permanent injunctive relief to compel defendants to provide purchasers or users of the
15 PRODUCTS with the required warning regarding the health hazards of the LISTED
16 CHEMICAL. Health & Safety Code § 25249.7(a).

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

19 **PARTIES**

20 11. Plaintiff MICHAEL DIPIRRO is a citizen of the State of California who is
21 dedicated to protecting the health of California citizens through the elimination or reduction of
22 toxic exposures from consumer products; and he brings this action in the public interest
23 pursuant to Health and Safety Code section 25249.7(d).

24 12. Defendant UNITED PACIFIC INDUSTRIES, INC. (“UNITED PACIFIC”) is a
25 person in the course of doing business within the meaning of Health and Safety Code section
26 25249.11.

1 13. UNITED PACIFIC manufactures (or otherwise processes for sale), distributes,
2 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct
3 that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
4 California.

5 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code section
7 25249.11.

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

12 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
13 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

14 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
15 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
16 in the State of California.

17 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
18 the course of doing business within the meaning of Health and Safety Code section 25249.11.

19 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
20 State of California.

21 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are
22 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
24 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
25 alleged herein. When ascertained, their true names shall be reflected in an amended complaint
26 or Doe addition.

1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
5 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
6 county with respect to the PRODUCTS.

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

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

17 **FIRST CAUSE OF ACTION**

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

19 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 48, inclusive.

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

25 26. Proposition 65 states, “[n]o person in the course of doing business shall
26 knowingly and intentionally expose any individual to a chemical known to the state to cause
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28

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

3 27. On April 8, 2022, plaintiff’s 60-Day Notice of Violation, together with the
4 requisite certificate of merit, was provided to UNITED PACIFIC and certain public
5 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
6 containing the LISTED CHEMICAL, purchasers and users in the State of California were being
7 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the
8 PRODUCTS, without the individual purchasers and users first having been provided with a
9 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

10 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
11 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
12 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day
13 Notices of Violation. As such, DEFENDANTS’ violations are ongoing and continuous in
14 nature, and will continue to occur in the future.

15 29. After receiving the claims asserted in the 60-day Notices of Violation, the
16 appropriate public enforcement agencies have failed to commence and diligently prosecute a
17 cause of action against DEFENDANTS under Proposition 65.

18 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
19 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
20 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
21 65.

22 31. DEFENDANTS knew or should have known that the PRODUCTS they
23 manufacture, distribute, and offer for sale or use in California contain the LISTED
24 CHEMICAL.

25 32. The exposures to the LISTED CHEMICAL result from the normal use of the
26 PRODUCTS in such a way as to expose individuals through dermal contact during reasonably
27 foreseeable use.

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

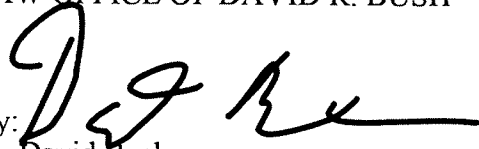
3 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
4 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
5 offering the PRODUCTS for sale or use in California without first providing a “clear and
6 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
7 *seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

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

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

10 Dated: 09/26/2022

11 Respectfully Submitted,
12 LAW OFFICE OF DAVID R. BUSH

13 By: 
14 David Bush
15 Attorneys for Plaintiff
16 MICHAEL DIPIRRO
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