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Superior Court of California,
County of Alameda

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

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14 MICHAEL DIPIRRO,

15 Plaintiff,

16 v.

17 EVERGREEN ENTERPRISES OF
VIRGINIA, LLC; and DOES 1-150,

18 Defendants.

Case No. **24CV093285**

**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 California to enforce the People’s right to be
4 informed of the presence of Diethylhexyl phthalate (“DEHP”), a toxic chemical, for exposures
5 created by the use of the Cheesehead PVC Bottle Opener.

6 2. Defendants are the manufacturers, distributors, and/or California retailers of the
7 Cheesehead PVC Bottle Opener.

8 3. The normal and foreseeable use of the above product manufactured, distributed,
9 and/or sold in California results in high levels of exposure to DEHP that require health hazard
10 warnings under Proposition 65. All such products are referred to collectively hereinafter as the
11 “PRODUCTS.”

12 4. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
13 warn California citizens about the risk of exposure to DEHP from the use of the PRODUCTS
14 that are manufactured, distributed, and/or offered for sale or use to consumers throughout the
15 State of California without the requisite health hazard warnings.

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

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

3 7. Defendants' failure to warn consumers and other individuals in the State of
4 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
5 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
6 of such conduct as well as civil penalties for each violation. *Health & Safety Code § 25249.7(a)*
7 & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards of the LISTED
11 CHEMICAL. *Health & 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 MICHAEL DIPIRRO 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 he brings this action in the public interest
18 pursuant to *Health and Safety Code section 25249.7(d)*.

19 11. Named defendant herein is a person in the course of doing business within the
20 meaning of *Health and Safety Code section 25249.11*. In this case, the named defendant is
21 Evergreen Enterprises of Virginia, LLC (Evergreen).

22 12. EVERGREEN manufactures (or otherwise processes for sale),
23 distributes, and/or offers the PRODUCTS for sale or use in the State of California, or implies by
24 its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the
25 State of California.

1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 county with respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 22, inclusive.

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

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

26 26. On May 28, 2024, plaintiff’s 60-Day Notice of Violation, together with the
27 requisite certificate of merit, was provided to EVERGREEN and certain
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1 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
2 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of
3 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
4 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
5 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
6 required by Proposition 65.

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

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

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

19 30. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufacture, distribute, and offer for sale or use in California contain the LISTED
21 CHEMICAL.

22 31. The exposures to the LISTED CHEMICAL result from the normal use of the
23 PRODUCTS in such a way as to expose individuals through dermal contact during reasonably
24 foreseeable use.

25 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
26 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
27 defined by California Code of Regulations title 27, section 25602(b).
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2. That the Court, pursuant to *Health and Safety Code section 25249.7(a)*, preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by *California Code of Regulations title 27, section 25601 et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

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

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

Dated: September 24, 2024

Respectfully Submitted,

By: 

David Bush
Jeremy Fietz
Attorneys for Plaintiff
MICHAEL DIPIRRO