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ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
09/11/2024 at 11:25:37 AM
By: Milagros Cortez,
Deputy Clerk

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

14 MICHAEL DIPIRRO,

15 Plaintiff,

16 v.

17 HEARTLAND METALS, INC., CITY
18 PLUMBING & ELECTRIC SUPPLY CO.; and
DOES 1-150,

19 Defendants.

Case No. **24CV091045**

**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 Lead and lead compounds [Pb], a toxic chemical, for exposures
5 created by the use of the Pure Lead 3HIFLEX Standard Roof Flashing.

6 2. Defendants are the manufacturers, distributors, and/or California retailers of the
7 Pure Lead 3HIFLEX Standard Roof Flashing.

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 Lead and lead compounds [Pb]
10 that require health hazard warnings under Proposition 65. All such products are referred to
11 collectively hereinafter as the “PRODUCTS.”

12 4. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
13 warn California citizens about the risk of exposure to Lead and lead compounds [Pb] from the
14 use of the PRODUCTS that are manufactured, distributed, and/or offered for sale or use to
15 consumers throughout the 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 February 27, 1987, California identified and listed
22 lead as a chemical known to cause reproductive toxicity. Lead and lead compounds became
23 subject to the “clear and reasonable warning” requirements of the act one year later on February
24 27, 1988, for reproductive toxicity. On October 1, 1992, California identified and listed lead as a
25 chemical known to cause cancer. Lead and lead compounds became subject to the “clear and
26 reasonable warning” requirements of the act one year later on October 1, 1993, for cancer. Cal.
27 Code Regs. tit. 27, “ 27001(c); Health & Safety Code “” 25249.8 & 25249.10(b). Lead and lead
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1 compounds are referred to hereinafter as the “LISTED CHEMICAL.” Defendants’ failure to
2 warn consumers and other individuals in the State of California about their exposure to the
3 LISTED CHEMICAL in conjunction with defendants’ sales of the PRODUCTS is a violation of
4 Proposition 65, and subjects defendants to enjoinder of such conduct as well as civil penalties
5 for each violation. *Health & Safety Code § 25249.7(a) & (b)(1)*.

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

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

12 **PARTIES**

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

17 10. Named defendants herein are persons in the course of doing business within the
18 meaning of *Health and Safety Code section 25249.11*. In this case, the named defendants are
19 Heartland Metals, Inc. and City Plumbing & Electric Supply Co. (hereinafter referred to as
20 “Heartland” and “City”, respectively).

21 11. At all relevant times, Defendant Heartland manufactures (or otherwise processes
22 for sale), distributes, and/or offers the PRODUCTS for ultimate sale nationwide, including in the
23 State of California, or implies by its conduct that it manufactures, distributes, and/or offers the
24 PRODUCTS for ultimate sale nationwide, including in the State of California.

25 12. At all relevant times, Defendant City distributes, and/or offers the PRODUCTS for
26 ultimate sale nationwide, including in the State of California, or implies by its conduct that it
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1 distributes, and/or offers the PRODUCTS for ultimate sale nationwide, including in the State of
2 California.

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

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

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

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

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

17 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

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

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1 **VENUE AND JURISDICTION**

2 20. 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 21. 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 22. 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 23. More specifically, Defendant Heartland chose to wholesale the PRODUCTS to
18 Defendant City, a retailer of different products, and knew, or should have known, that City was
19 marketing to and selling its various products to consumers throughout the United States,
20 including to those in the State of California. As a result, both Defendant Heartland and
21 Defendant City were availing themselves of the enormous potential marketplace of the State of
22 California for their products. The PRODUCTS were manufactured by Heartland and sold to
23 California through its authorized retailer, City, a business with multiple locations throughout the
24 United States. City’s online store “About Us” page reveals that City Plumbing are one of the
25 “Top 150 Plumbing distributors in the nation”. At the time of the sale of the PRODUCTS to
26 California, City’s shipping page also made it clear that they sell product throughout the entire
27 United States, and specifically shows 4-5 days for ground shipping of products to California. In
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1 other words, City Plumbing is unequivocal about the fact that it sells its products to California
2 and throughout the Country. Heartland indisputably and knowingly avail themselves of the
3 California marketplace –partnering with retailers like City Plumbing that clearly and openly sell
4 products nationwide, and including to California. Since Heartland voluntarily takes advantage
5 of the California consumer market and maintains relationships with retailers, including City,
6 that openly sell to California, both Heartland and City are subject to California's jurisdiction, as
7 would be expected under any reasonable standard.

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9 **FIRST CAUSE OF ACTION**

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

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

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

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

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

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

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

11 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
13 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
14 65.

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

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

21 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
22 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
23 defined by California Code of Regulations title 27, section 25602(b).

24 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
25 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact.

26 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
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1 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
2 sale or use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in the State of California who were or who would become
5 exposed to the LISTED CHEMICAL through dermal contact during the reasonably foreseeable
6 uses of the PRODUCTS.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact resulting from the reasonably foreseeable use of the PRODUCTS sold by
10 DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
11 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

12 38. Pursuant to *Health and Safety Code section 25249.7(b)*, as a consequence of the
13 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
14 for each violation.

15 39. As a consequence of the above-described acts, *Health and Safety Code*
16 *section 25249.7(a)* also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

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

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

27 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
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4. That the Court grant such other and further relief as may be just and proper.

Dated: September 11, 2024

Respectfully Submitted,

By: 

Jeremy Fietz
Attorneys for Plaintiff
MICHAEL DIPIRRO