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ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP - 8 2008

GORDON PARK-LI, Clerk
BY: PARAM NATT
Deputy Clerk

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

ANTHONY E. HELD, Ph.D., P.E.,
Plaintiff,
v.
HARRIET CARTER GIFTS, INC.; and DOES
1 through 150, inclusive,
Defendants.

Case No. 060-08-479572

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Cal. Health & Safety Code § 25249.6 et seq.)

CASE MANAGEMENT CONFERENCE SET

FEB - 6 2009 - 9⁰⁰AM

DEPARTMENT 212

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, Ph.D., P.E., in the public interest of the citizens of the State of California, to enforce the
4 People's right to be informed of the presence of di(2-ethylhexyl)phthalate, a toxic chemical, found
5 in certain vinyl smocks sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
7 California citizens about their exposure to di(2-ethylhexyl)phthalate present in or on certain vinyl
8 mats that defendants manufacture, distribute and/or offer for sale to consumers throughout the
9 State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the vinyl
11 mats that defendants manufacture, distribute and/or offer for sale to consumers throughout the
12 State of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual" (*Cal. Health & Safety Code* § 25249.6.)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as a
19 chemical known to cause reproductive and developmental harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the "clear
21 and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR*
22 *§ 27001; Cal. Health & Safety Code* § 25249.8.) Di(2-ethylhexyl)phthalate shall hereinafter be
23 referred to as the "LISTED CHEMICAL."

24 6. Defendants manufacture, distribute and/or sell vinyl mats containing Di(2-
25 ethylhexyl)phthalate, including, but not limited to, *Water Wonder Mat/Aqua Play Pad*
26 *#B3906/HC3906*. All such vinyl mats containing the LISTED CHEMICAL shall hereinafter be
27 referred to as the "PRODUCTS."

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7. Defendants' failure to warn consumers and/or other individuals in the State of California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such violation.

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

9. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

PARTIES

10. Plaintiff ANTHONY E. HELD, Ph.D., P.E., is a citizen of the City and County of Sacramento in the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

11. Defendant HARRIET CARTER GIFTS, INC. is a person in the course of doing business within the meaning of California Health & Safety Code § 25249.11.

12. HARRIET CARTER GIFTS, INC. manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons in the course of doing business within the meaning of California Health & Safety Code § 25249.11.

14. MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons in the course of doing business within the meaning of California Health & Safety Code § 25249.11.

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

17. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons in the course of doing business within the meaning of California Health & Safety Code § 25249.11.

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

19. At this time, the true names of Defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

20. HARRIET CARTER GIFTS, INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as “DEFENDANTS.”

VENUE AND JURISDICTION

21. Venue is proper in the San Francisco County Superior Court, pursuant to Code of Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the County of San Francisco, and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

22. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 is brought does not specify any other basis of subject matter jurisdiction.

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that either are citizens of the State of California, have sufficient minimum contacts in
6 the State of California, or otherwise purposefully avail themselves of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
8 courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65)**

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

13 25. The citizens of the State of California have expressly stated in the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
15 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer, birth
16 defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

17 26. Proposition 65 states, “No person in the course of doing business shall knowingly
18 and intentionally expose any individual to a chemical known to the state to cause cancer or
19 reproductive toxicity without first giving clear and reasonable warning to such individual”
20 (*Id.*)

21 27. On June 5, 2008, a sixty-day notice of violation, together with the requisite
22 certificate of merit, was provided to HARRIET CARTER GIFTS, INC., and various public
23 enforcement agencies, stating that as a result of DEFENDANTS’ sale of the PRODUCTS,
24 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
25 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
26 purchasers and users first having been provided with a “clear and reasonable warning” regarding
27 such toxic exposures.

28 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of

1 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
2 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
3 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
4 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
5 believes that such violations will continue to occur into the future.

6 29. After receipt of the claims asserted in the sixty-day notice of violation, the
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
8 of action against DEFENDANTS under Proposition 65.

9 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
10 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
11 limits.

12 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
13 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
14 CHEMICAL.

15 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
16 to expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the
17 reasonably foreseeable use of the PRODUCTS.

18 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
19 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
20 by 27 CCR § 25601(b).

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
22 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
23 and ingestion.

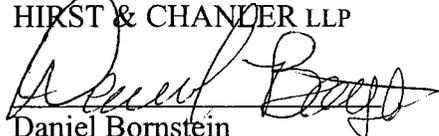
24 35. DEFENDANTS, and each of them, intended that such exposures to the LISTED
25 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
26 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
27 of PRODUCTS to individuals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

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

Dated: September 4, 2008

Respectfully Submitted,
HIRST & CHANDER LLP

Daniel Bornstein
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.