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FILED

JUL 13 2010

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hendryx, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 WESTRIM, INC.; CREATIVITY INC.; and
15 DOES 1-150, inclusive,

16 Defendants.

Case No. AV 1003620

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff JOHN MOORE, in
3 the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in
5 crafting tools sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to DEHP, present in or on certain crafting tools
8 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State
9 of California.

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

15 4. On October 23, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was therefore subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*) DEHP shall be referred to hereinafter as the “LISTED
20 CHEMICAL.”

21 5. Defendants manufacture, distribute, and/or sell crafting tools containing excessive
22 levels of the LISTED CHEMICAL including, but not limited to, the *Crafting Expressions 1pc*
23 *Chain Nose Pliers, PC90B-PE-000 (#0 48492 04436 2)*. All such crafting tools containing the
24 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

1 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
2 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges
3 and believes that such violations will continue to occur into the future.

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

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

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

13 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
14 to expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
15 inhalation during the reasonably foreseeable use of the PRODUCTS.

16 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
17 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
18 defined by 27 CCR § 25602(b).

19 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
20 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
21 ingestion, and/or inhalation.

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

26 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and/or other individuals in the State of California who were or who could become
28 exposed to the LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation

1 during the reasonably foreseeable use of the PRODUCTS.

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

8 39. As a consequence of the above-described acts, DEFENDANTS are liable for a
9 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
10 Safety Code § 25249.7(b).

11 40. As a consequence of the above-described acts, California Health & Safety Code
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

16 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
18 alleged herein;

19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
22 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures the
23 LISTED CHEMICAL;

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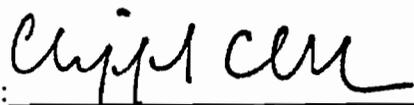
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: July 13, 2010

Respectfully Submitted,
THE CHANLER GROUP

By: 
Clifford A. Chanler
Attorneys for Plaintiff
JOHN MOORE