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JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

ILLINOIS INDUSTRIAL TOOL, INC.; and
DOES 1-150, inclusive,

Defendants.

) Case No. 113 CV 24295 1

) COMPLAINT FOR CIVIL PENALTIES
) AND INJUNCTIVE RELIEF

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

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff John Moore in the
3 public interest of the citizens of the State of California to enforce the People's right to be
4 informed of the presence of lead, a toxic chemical found in cases for CDs/DVDs and tape
5 measures sold in California and di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in
6 cases for CDs/DVDs and hand tool grips sold in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens about the risk of exposure to lead present in and on cases for
9 CDs/DVDs and tape measures, and DEHP present in and on cases for CDs/DVDs and hand tool
10 grips, manufactured, distributed, and offered for sale or use to consumers throughout the State
11 of California.

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

17 4. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
18 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
19 subject to the "clear and reasonable warning" requirements of the act one year later on October
20 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
21 25249.10(b).

22 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
23 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
24 subject to the "clear and reasonable warning" requirements of the act one year later on February
25 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 11. Defendant Illinois Industrial Tool, Inc. ("IIT") is a person in the course of doing
2 business within the meaning of Health and Safety Code section 25249.11.

3 12. IIT manufactures, distributes, and/or offers the PRODUCTS for sale or use in the
4 State of California, or implies by its conduct that it manufactures, distributes, and/or offers the
5 PRODUCTS for sale or use in the State of California.

6 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
7 persons in the course of doing business within the meaning of Health and Safety Code section
8 25249.11.

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

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

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

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

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

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

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

5 27. On April 19, 2011, plaintiff’s 60-Day Notice of Violation (the “Notice”), together
6 with the requisite Certificate of Merit, was provided to IIT and certain public enforcement
7 agencies stating that, as a result of DEFENDANTS’ sales of cases for CDs/DVDs containing
8 DEHP, purchasers and users in the State of California were being exposed to lead resulting from
9 the reasonably foreseeable uses of the cases for CDs/DVDs, without the individual purchasers
10 and users first having been provided with a “clear and reasonable warning” regarding such toxic
11 exposures, as required by Proposition 65.

12 28. On December 20, 2012, plaintiff’s Supplemental 60-Day Notice of Violation (the
13 “Supplemental Notice”), together with the requisite Certificate of Merit, was provided to IIT
14 and certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
15 PRODUCTS containing lead and DEHP, purchasers and users in the State of California were
16 being exposed to lead and DEHP resulting from the reasonably foreseeable uses of the
17 PRODUCTS, without the individual purchasers and users first having been provided with a
18 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.
19 The Notice and Supplemental Notice shall collectively be referred to hereinafter as the
20 “Notices.”

21 29. DEFENDANTS have engaged in the manufacture, distribution, and offering of
22 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
23 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notices.
24 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to
25 occur in the future.

1 30. After receiving the claims asserted in the Notices, the appropriate public
2 enforcement agencies have failed to commence and diligently prosecute a cause of action
3 against DEFENDANTS under Proposition 65.

4 31. The PRODUCTS manufactured, distributed, and offered for sale or use in
5 California by DEFENDANTS contain lead and DEHP in amounts above the allowable state
6 limits, such that they require a "clear and reasonable" warning under Proposition 65.

7 32. DEFENDANTS knew or should have known that the PRODUCTS they
8 manufactured, distributed, and offered for sale or use in California contained lead and DEHP.

9 33. Lead and DEHP are present in or on the PRODUCTS in such a way as to expose
10 individuals through dermal contact and/or ingestion during reasonably foreseeable use.

11 34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
12 continue to cause, consumer exposures to lead and DEHP, as such exposures are defined by
13 California Code of Regulations title 27, section 25602(b).

14 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
15 of the PRODUCTS exposed individuals to lead and DEHP through dermal contact and/or
16 ingestion.

17 36. DEFENDANTS intended that such exposures to lead and DEHP from the
18 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
19 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to
20 individuals in the State of California.

21 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 consumers and other individuals in the State of California who were or who would become
23 exposed to lead and DEHP through dermal contact and/or ingestion during the reasonably
24 foreseeable uses of the PRODUCTS.

25 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, individuals exposed to DEHP and lead through dermal contact
27 and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
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1 DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to
2 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

6 40. As a consequence of the above-described acts, Health and Safety Code
7 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

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

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


13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
15 offering the PRODUCTS for sale or use in California without first providing a "clear and
16 reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et*
17 *seq.*, as to the harms associated with exposures to lead and DEHP;

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

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

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21 Dated: March 12, 2013

Respectfully Submitted,
THE CHANLER GROUP

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23 By: 
24 Harris A. Weinstein
25 Attorneys for Plaintiff
26 JOHN MOORE
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