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ENDORSED  
FILED  
ALAMEDA COUNTY

APR 05 2012

CLERK OF THE SUPERIOR COURT  
By Jennifer Daley, Deputy

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

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 STAR ASIA, U.S.A., LLC; and DOES 1-150,  
18 inclusive,

19 Defendants.

Case No. \_\_\_\_\_

RG12624392

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

1  
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 the  
5 grips of tools sold in California.

6           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risk of exposure to DEHP present in or on the grips of tools  
8 manufactured, distributed, and/or offered for sale or use to consumers throughout the state of  
9 California.

10          3.     High levels of DEHP are commonly found in and on the grips of tools that  
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of  
12 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”), “[n]o person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and  
17 reasonable warning to such individual ...” (Cal. Health & Safety Code § 25249.6.)

18          5.     On October 24, 2003, California identified and listed DEHP as a chemical known  
19 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and  
20 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.  
21 27 Cal. Code Regs. (“CCR”), § 27001 (c); Cal. Health & Safety Code §§ 25249.8 &  
22 25249.10(b).) DEHP shall be referred to hereinafter as the “LISTED CHEMICAL.”

23          6.     Defendants manufacture, distribute, and/or sell tools with grips that contain  
24 excessive levels of DEHP, including, but not limited to, the *Titan Telescopic Magnetic Pickup*  
25 *Tool, Item #11063 (#8 02090 11063 4)*. All such tools with grips containing DEHP are  
26 collectively referred to hereinafter as “PRODUCTS.”

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

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

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

11 **PARTIES**

12 10. Plaintiff JOHN MOORE is a citizen of the state of California who is dedicated to  
13 protecting the health of California citizens through the elimination or reduction of toxic  
14 exposures from consumer products, and brings this action in the public interest pursuant to  
15 California Health & Safety Code § 25249.7(d).

16 11. Defendant STAR ASIA, U.S.A., LLC ("STAR ASIA") is a person in the course  
17 of doing business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendant STAR ASIA manufactures, distributes, and/or offers the PRODUCTS  
19 for sale or use in the State of California, or implies by its conduct that it manufactures,  
20 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

21 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
22 persons in the course of doing business within the meaning of California Health & Safety Code  
23 § 25249.11.

24 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
25 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
26 engage in the process of research, testing, designing, assembling, fabricating, and/or  
27 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.  
28

1 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
2 in the course of doing business within the meaning of California Health & Safety Code §  
3 25249.11.

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

7 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
8 the course of doing business within the meaning of California Health & Safety Code §  
9 25249.11.

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

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

17 20. STAR ASIA, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

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

26 22. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
28

1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 action 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 is a citizen of the state of California, has sufficient minimum contacts in the  
6 state of California, or otherwise purposefully avails itself of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
8 California courts consistent with traditional notions of fair play and substantial justice.

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. 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 § 25249.6 *et seq.*  
15 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
16 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

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....” (*Ibid.*)

21 27. On or about October 28, 2011, plaintiff’s sixty-day notice of violation, together  
22 with the requisite certificate of merit, was provided to STAR ASIA and various public  
23 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of tools with grips,  
24 purchasers and users in the state of California were being exposed to the LISTED CHEMICAL  
25 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual  
26 purchasers and users first having been provided with a “clear and reasonable warning”  
27 regarding such toxic exposures.  
28

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

6           29. After receiving the claims asserted in the sixty-day notice of violation, the  
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
8 cause 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 contain the LISTED CHEMICAL in amounts above the  
11 allowable state limits, such that they require a "clear and reasonable" Proposition 65 warning  
12 prior to being sold or offered for sale.

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

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

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 exposures are  
20 defined by Tit. 27 CCR § 25602(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/or ingestion.

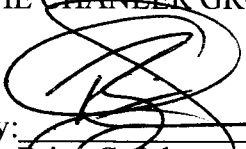
24           35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
25 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
26 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
27 sale or use to individuals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



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

2  
3     Dated: April 2, 2012

Respectfully Submitted,  
THE CHANLER GROUP

4  
5           By:   
6                 Brian C. Johnson  
7                 Attorneys for Plaintiff  
8                 JOHN MOORE