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**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 29 2012

CLERK OF THE SUPERIOR COURT
By M. WILLIAMS 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 THUNDER GROUP, INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. **RG12619183**

**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”) and di-n-butyl phthalate
5 (“DBP”), toxic chemicals found in the handle or grip portion of kitchen 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 the DEHP and DBP present in or on the grip or
8 handle portion of kitchen tools with manufactured, distributed, and/or offered for sale or use to
9 consumers throughout the state of California.

10 3. High levels of DEHP and DBP are commonly found in and on the handle or grip
11 portion of kitchen tools the defendants manufacture, distribute, and/or offer for sale to
12 consumers throughout the 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
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 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. (27
21 Cal. Code Regs., § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 & 25249.10(b).)

22 6. On December 2, 2005, California identified and listed DBP as a chemical known
23 to cause birth defects and other reproductive harm. DBP became subject to “clear and
24 reasonable warning” requirements of Proposition 65 one year later on December 2, 2006. (27
25 CCR § 27001 (c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP and DBP shall
26 be referred to collectively as the “LISTED CHEMICALS.”

1 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
2 persons in the course of doing business within the meaning of California Health & Safety Code
3 § 25249.11.

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

8 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
9 in the course of doing business within the meaning of California Health & Safety Code §
10 25249.11.

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

14 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
15 the course of doing business within the meaning of California Health & Safety Code §
16 25249.11.

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

19 20. 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 § 474. Plaintiff is informed and believes, and on that basis alleges, that
22 each fictitiously named defendant is responsible for the acts and occurrences alleged. When
23 ascertained, their true names shall be reflected in an amended complaint.

24 21. THUNDER GROUP, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”
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1 VENUE AND JURISDICTION

2 22. Venue is proper in the Alameda Superior Court, pursuant to Code of Civil
3 Procedure §§ 394, 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 23. The California Superior Court has jurisdiction over this action pursuant to
8 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
9 in all causes except those given by statute to other trial courts.” The statute under which this
10 action is brought does not specify any other basis of subject matter jurisdiction.

11 24. 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, 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 FIRST CAUSE OF ACTION

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

19 25. Plaintiff realleges and incorporates by reference as if fully set forth herein,
20 Paragraphs 1 through 24, inclusive.

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

25 27. Proposition 65 states, “[n]o person in the course of doing business shall
26 knowingly and intentionally expose any individual to a chemical known to the state to cause
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual....” (*Ibid.*)

3 28. On or about December 13, 2011, plaintiff’s sixty-day notice of violation, together
4 with the requisite certificate of merit, was provided to THUNDER GROUP and various public
5 enforcement agencies stating that as a result of the DEFENDANTS’ sales of kitchen tools with
6 grips, purchasers and users in the state of California were being exposed to the LISTED
7 CHEMICALS resulting from the reasonably foreseeable use of the PRODUCTS, without the
8 individual purchasers and users first having been provided a “clear and reasonable warning”
9 regarding such toxic exposures.

10 29. DEFENDANTS engage in the manufacture, distribution, and/or offering of the
11 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and such
12 violations have continued to occur beyond their receipt of plaintiff’s sixty-day notice of
13 violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature.

14 30. After receiving the claims asserted in the sixty-day notice of violation, the
15 appropriate public enforcement agencies have failed to commence and diligently prosecute a
16 cause of action against DEFENDANTS under Proposition 65.

17 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
18 California by DEFENDANTS contain the LISTED CHEMICALS in amounts requiring a “clear
19 and reasonable warning” under Proposition 65.

20 32. DEFENDANTS knew or should have known that the PRODUCTS they
21 manufacture, distribute, and/or offer for sale or use in California contain the LISTED
22 CHEMICALS.

23 33. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
24 to expose individuals through dermal contact and/or ingestion during the reasonably foreseeable
25 use of the PRODUCTS.

1 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
3 defined by Title 27 California Code of Regulations (“CCR”) § 25602(b).

4 35. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
5 of the PRODUCTS exposes individuals to the LISTED CHEMICALS through dermal contact
6 and/or ingestion.

7 36. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
8 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
9 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
10 sale or use to individuals in the state of California.

11 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and/or other individuals in the state of California who were or who would become
13 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
14 reasonably foreseeable use of the PRODUCTS.

15 38. Contrary to the express policy and statutory prohibition of Proposition 65, as
16 enacted directly by California voters, individuals exposed to the LISTED CHEMICALS
17 through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the
18 PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning” have suffered,
19 and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate
20 remedy at law.

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

24 40. As a consequence of the above-described acts, California Health & Safety Code
25 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
26 DEFENDANTS.

1 **PRAYER FOR RELIEF**

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

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

5 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
6 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
7 offering the PRODUCTS for sale or use in California without first providing “clear and/or
8 reasonable warnings” as defined by Tit. 27 CCR § 25601, as to the harms associated with
9 exposure the LISTED CHEMICALS;

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

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

12 Dated: February 23, 2012

13 Respectfully Submitted,
14 THE CHANLER GROUP

15 By: 
16 Brian C. Johnson
17 Attorneys for Plaintiff
18 JOHN MOORE