

ENDORSED
FILED
ALAMEDA COUNTY
APR 11 2012
CLERK OF THE SUPERIOR COURT
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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,
16 Plaintiff,
17 v.
18 S. P. RICHARDS COMPANY; GENUINE
19 PARTS COMPANY; and DOES 1-150,
20 inclusive,
21 Defendants.

22 Case No. **RG12625172**
23 **COMPLAINT FOR CIVIL PENALTIES**
24 **AND INJUNCTIVE RELIEF**
25 (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 pencil cases/pouches sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive harms associated with their exposure to the DEHP
8 present in or on certain pencil cases/pouches that defendants manufacture, import, distribute,
9 and/or offer for sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the pencil cases/pouches 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 Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual ...” (Health & Saf. 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. (Cal.
21 Code Regs., tit. 27, § 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)

22 6. Defendants manufacture, distribute, and/or offer for sale pencil cases/pouches
23 containing DEHP including, but not limited to, *Sparco Ring Binder Pocket, #01606 (#0 35255*
24 *01606 3)*. All such pencil cases/pouches containing DEHP shall hereinafter be referred to as the
25 “Products.”

26 7. Defendants’ failure to warn consumers and/or other individuals in the state of
27 California not covered by California’s Occupational Safety Health Act, Labor Code section
28 6300 *et seq.*, about their exposure to DEHP and its potential to cause birth defects and other

1 reproductive harm in conjunction with Defendants' distribution, importation, manufacturing,
2 and/or sale of the Products is a violation of Proposition 65 and subjects Defendants to
3 enjoinder of such conduct as well as civil penalties for each such violation.

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

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

10 **PARTIES**

11 10. Plaintiff, John Moore, is a citizen of the state of California who is dedicated to
12 protecting the health of California citizens through the elimination or reduction of toxic
13 exposures from consumer products; he brings this action in the public interest pursuant to
14 Health & Safety Code section 25249.7, subdivision (d).

15 11. Defendant S. P. Richards Company ("S.P.") is a person in the course of doing
16 business within the meaning of Health & Safety Code section 25249.11.

17 12. Defendant S.P. manufactures, distributes, and/or offers the PRODUCTS for sale
18 or use in the state of California, or implies by its conduct that it manufactures, distributes,
19 and/or offers the Products for sale or use in the state of California.

20 13. Defendant Genuine Parts Company ("Genuine") is a person in the course of doing
21 business within the meaning of Health & Safety Code section 25249.11.

22 14. Defendant Genuine manufactures, distributes, and/or offers the Products for sale
23 or use in the state of California, or implies by its conduct that it manufactures, distributes,
24 and/or offers the Products for sale or use in the state of California.

25 15. Defendants DOES 1-50 ("Manufacturer Defendants") are each persons in the
26 course of doing business within the meaning of Health & Safety Code section 25249.11.

27 16. Manufacturer Defendants engage in the process of researching, testing, designing,
28 assembling, fabricating, and/or manufacturing, or imply by their conduct that they engage in the

1 process of researching, testing, designing, assembling, fabricating, and/or manufacturing, one or
2 more of the PRODUCTS offered for sale or use in the state of California.

3 17. Defendants DOES 51-100 (“Distributor Defendants”) are each persons in the
4 course of doing business within the meaning of Health & Safety Code section 25249.11.

5 18. Distributor Defendants distribute, exchange, transfer, process, and/or transport
6 one or more of the Products to individuals, businesses, or retailers for sale or use in the state of
7 California.

8 19. Defendants DOES 101-150 (“Retailer Defendants”) are each persons in the course
9 of doing business within the meaning of Health & Safety Code section 25249.11.

10 20. Retailer Defendants offer the Products for sale to individuals in the state of
11 California.

12 21. 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 name pursuant to
14 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
15 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
16 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

17 22. S.P., Genuine, Manufacturer Defendants, Distributor Defendants, and Retailer
18 Defendants shall, where appropriate, collectively be referred to as “Defendants.”

19 **VENUE AND JURISDICTION**

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

25 24. The California Superior Court has jurisdiction over this action pursuant to
26 California Constitution Article VI, section 10, which grants the Superior Court “original
27 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
28 which this action is brought does not specify any other basis of subject matter jurisdiction.

1 sixty-day notice of violation. Plaintiff further alleges and believes that such violations will
2 continue to occur into the future.

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

6 32. The Products manufactured, distributed, and/or offered for sale or use in
7 California by Defendants contained DEHP in an amount above the allowable state limits.

8 33. Defendants knew or should have known that the Products manufactured,
9 distributed, and/or offered for sale or use in California contained DEHP.

10 34. DEHP was present in or on the Products in such a way as to expose individuals to
11 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the
12 Products.

13 35. The normal and reasonably foreseeable use of the Products has caused, and
14 continues to cause, consumer exposures to DEHP, as such exposure is defined by California
15 Code of Regulations title 27, section 25602, subdivision (b).

16 36. Defendants had knowledge that the normal and reasonably foreseeable use of the
17 Products would expose individuals to DEHP through dermal contact and/or ingestion.

18 37. Defendants intended that such exposures to DEHP from the reasonably
19 foreseeable use of the Products would occur by their deliberate, non-accidental participation in
20 the manufacture, distribution, and/or offering of the Products for sale or use to individuals in the
21 state of California.

22 38. Defendants failed to provide a "clear and reasonable warning" to those consumers
23 and/or other individuals in the state of California who were, or who could become, exposed to
24 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the
25 Products.

26 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to DEHP through dermal contact and/or
28 ingestion resulting from the reasonably foreseeable use of the Products sold by Defendants

1 without a “clear and reasonable warning,” have suffered, and continue to suffer, irreparable
2 harm for which they have no plain, speedy, or adequate remedy at law.

3 40. As a consequence of the above-described acts, Defendants are liable for a
4 maximum civil penalty of \$2,500 per day for each violation pursuant to Health & Safety Code
5 section 25249.7, subdivision (b).

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

9 **PRAYER FOR RELIEF**

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

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

14 2. That the Court, pursuant to Health & Safety Code section 25249.7, subdivision (a)
15 preliminarily and permanently enjoin Defendants from manufacturing, distributing, and/or
16 offering the Products for sale or use in California, without providing “clear and reasonable
17 warnings” as defined by California Code of Regulations title 27, section 25601 as to the harms
18 associated with exposure to DEHP;

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

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

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22 Dated: April 10, 2012

Respectfully Submitted,
THE CHANLER GROUP

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25 By: 
Rachel S. Doughty
Attorneys for Plaintiff
JOHN MOORE