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FILED

AUG 08 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 IDEAL INDUSTRIES, INC. and DOES 1-150,

17 Defendants.

Case No. CIV 1203642

**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 the
5 grips of certain of defendant's hand tools manufactured, distributed and/or otherwise sold by
6 defendants in California.

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

12 3. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical
13 known to cause birth defects and other reproductive harm. DEHP became subject to the
14 warning requirement one year later and was therefore subject to the "clear and reasonable
15 warning" requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c);*
16 *Cal. Health & Safety Code § 25249.8.*)

17 4. DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on grips
19 of hand tools that defendants manufacture, distribute, and/or offer for sale to consumers
20 throughout the State of California including, but not limited to, Buchanan Construction
21 Products needle nose pliers, #3-1071. All such hand tools with grips containing the LISTED
22 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

23 6. Defendants' failure to warn consumers and/or other individuals in the State of
24 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'
25 sale of the PRODUCTS is a violation of Proposition 65.

26 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide purchasers or users of the
28

1 PRODUCTS with the required warning regarding the health hazards of the LISTED
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

3 8. Plaintiff also seeks civil penalties against defendants for their violations of
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 9. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to
7 protecting the health of California citizens through the elimination or reduction of toxic
8 exposures from consumer products, and brings this action in the public interest pursuant to
9 California Health & Safety Code Section 25249.7.

10 10. Defendant IDEAL INDUSTRIES, INC. ("IDEAL INDUSTRIES") is a person doing
11 business within the meaning of California Health & Safety Code Section 25249.11.

12 11. Defendant IDEAL INDUSTRIES manufactures, distributes, and/or offers the
13 PRODUCTS for sale or use in the State of California or implies by its conduct that it
14 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
15 California.

16 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
17 doing business within the meaning of California Health & Safety Code Section 25249.11.

18 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
19 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
20 engage in the process of research, testing, designing, assembling, fabricating, and/or
21 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

22 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
23 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

27 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
28 business within the meaning of California Health & Safety Code Section 25249.11.

1 FIRST CAUSE OF ACTION

2 (Violation of Proposition 65 - Against All Defendants)

3 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 22, inclusive.

5 24. The citizens of the State of California have expressly stated in the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5, *et*
7 *seq.* (Proposition 65) that they must be informed "about exposures to chemicals that cause
8 cancer, birth defects and other reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

9 25. On January 31, 2012, a sixty-day notice of violation ("60-Day Notice"), together
10 with the requisite Certificate of Merit, was provided to IDEAL INDUSTRIES and various
11 public enforcement agencies stating that as a result of the IDEAL INDUSTRIES' manufacture,
12 distribution and sales of the PRODUCTS, purchasers and users in the State of California are
13 being exposed to lead resulting from the reasonably foreseeable uses of the PRODUCTS,
14 without the individual purchasers and users first having been provided with a "clear and
15 reasonable warning" regarding such toxic exposures.

16 26. DEFENDANTS have engaged in the manufacture, distribution, and/or offering
17 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section
18 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for
19 sale or use in violation of California Health & Safety Code Section 25249.6 has continued to
20 occur beyond IDEAL INDUSTRIES's receipt of plaintiff's 60-Day Notice. Plaintiff further
21 alleges and believes that such violations will continue to occur into the future.

22 27. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
23 enforcement agencies have failed to commence and diligently prosecute a cause of action
24 against DEFENDANTS under Proposition 65.

25 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
26 California by DEFENDANTS, contain the LISTED CHEMICAL.

27 29. DEFENDANTS knew or should have known that the PRODUCTS contained the
28 LISTED CHEMICAL.

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

4 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
6 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
7 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to
8 the LISTED CHEMICAL;

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

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

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12 Dated: August 6, 2012

Respectfully submitted,

THE CHANLER GROUP

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15 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
JOHN MOORE