

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Ave., Suite 202
5 Mill Valley, CA 94941
6 Telephone: 415.388.0911
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff
9 JOHN MOORE

FILED

JUL 05 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 GENERAL TOOLS & INSTRUMENTS
17 COMPANY LLC and DOES 1-150,

18 Defendants.

Case No. CLV 1203099

**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 defendants' 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 grips of
19 hand tools that defendants manufacture, distribute, and/or offer for sale to consumers
20 throughout the State of California including, but not limited to, General Revolving Punch,
21 No.72, Product #: 0 38728 41039 9. 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 GENERAL TOOLS & INSTRUMENTS COMPANY LLC ("GENERAL
11 TOOLS") is a person doing business within the meaning of California Health & Safety Code
12 Section 25249.11.

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

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

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

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

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

28

1 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

1 29. DEFENDANTS knew or should have known that the PRODUCTS contained the
2 LISTED CHEMICAL.

3 30. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
4 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
5 25602(b), through dermal contact and/or ingestion during or as a consequence of the
6 reasonably foreseeable use of the PRODUCTS.

7 31. DEFENDANTS knew or should have known that the reasonably foreseeable use
8 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
9 and/or ingestion.

10 32. DEFENDANTS' participation in the manufacture, distribution and/or offer for
11 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-
12 accidental.

13 33. DEFENDANTS failed to provide a "clear and reasonable warning" to those
14 consumers and/or other individuals in the State of California who were or who could become
15 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

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

21 35. As a consequence of the above-described acts, DEFENDANTS are liable for a
22 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
23 California Health & Safety Code Section 25249.7(b).

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

27 ///
28

1 PRAYER FOR RELIEF

2 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
3 follows:

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

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

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

13 4. That the Court grant such other and further relief as may be just and proper.
14

15 Dated: June 26, 2012

Respectfully submitted,

THE CHANLER GROUP

17
18 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
JOHN MOORE