

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Brian C. Johnson, State Bar No. 235965
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

(ENDORSED)
FILED
SEP 21 2012
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY S. Smith DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.

TRUE VALUE COMPANY; and DOES 1-
150, inclusive,
Defendants.

Case No. **112CV232816**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(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 hand 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 and on the grips of hand
8 tools manufactured, distributed, and/or offered for sale or use to consumers throughout the state
9 of California.

10 3. High levels of DEHP are commonly found in and on the grips of hand tools that
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of
12 California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and 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 & Safety Code § 25249.6.

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

23 6. Defendants manufacture, distribute, and/or sell hand tools with grips that contain
24 excessive levels of DEHP, including, but not limited to, those offered in connection with the
25 *GTV 36 Piece Household Tool Kit, #123197 (#0 52088 00268 1)*. All such hand tool grips
26 containing DEHP are referred to collectively hereinafter as “PRODUCTS.”
27
28

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 sales 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. Health & Safety Code § 25249.7(a)
5 & (b)(1).

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

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

12 **PARTIES**

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

17 11. Defendant TRUE VALUE COMPANY ("TRUE VALUE") is a person in the
18 course of doing business within the meaning of Health and Safety Code section 25249.11.

19 12. TRUE VALUE manufactures, distributes, and/or offers the PRODUCTS for sale
20 or use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
21 offers the PRODUCTS for sale or use in the state of California.

22 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
23 persons in the course of doing business within the meaning of Health and Safety Code section
24 25249.11.

25 14. MANUFACTURER DEFENDANTS engage in the process of researching,
26 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
27
28

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

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

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

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
9 the course of doing business within the meaning of Health and Safety Code section 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 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 20. TRUE VALUE, 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 Santa Clara County Superior Court, pursuant to Code of
22 Civil Procedure sections 394, 395, and 395.5, because this Court is a court of competent
23 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to
24 occur, in Santa Clara County, and/or because DEFENDANTS conducted, and continue to
25 conduct, 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, section 10, which grants the Superior Court “original
28

1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this 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, Health and Safety Code section 25249.6 *et seq.* that
15 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
16 reproductive harm.” 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 ...” *Id.*

21 27. On or about April 5, 2012, plaintiff’s sixty-day notice of violation, together with
22 the requisite certificate of merit, was provided to TRUE VALUE and certain requisite public
23 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
24 containing the LISTED CHEMICAL, purchasers and users in the state of California were being
25 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable use of the
26 PRODUCTS, without the individual purchasers and users first having been provided with a
27 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.
28

1 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 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 and
5 continuous in nature and, as such, 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" warning under Proposition
12 65.

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 California Code of Regulations title 27, section 25602(b).

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
22 the PRODUCTS exposes 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 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
2 consumers and other individuals in the state of California who were or who could become
3 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
4 reasonably foreseeable use of the PRODUCTS.

5 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
6 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
7 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
8 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
9 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

10 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
11 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
12 for each violation.

13 39. As a consequence of the above-described acts, Health and Safety Code
14 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
15 DEFENDANTS.

16 **PRAYER FOR RELIEF**

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

18 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
19 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

20 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
21 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
22 offering the PRODUCTS for sale or use in California without first providing “clear and
23 reasonable warnings” as defined by California Code of Regulations title 27, section 25601 *et*
24 *seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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

26 ///

27 ///

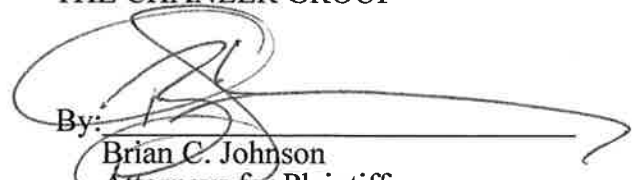
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: September 21, 2012

Respectfully Submitted,
THE CHANLER GROUP



By:
Brian C. Johnson
Attorneys for Plaintiff
JOHN MOORE