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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

CGC 13-534885

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 PROSPERITY TOOL, INC.; and DOES 1-  
18 150, inclusive,

19 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.5 *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 about exposures to Di(2-ethylhexyl)phthalate ("DEHP") and Lead, toxic chemicals  
5 that are found in the vinyl/PVC grips of tools sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
7 warn California citizens about the risks of exposures to DEHP and Lead present in and on the  
8 grips of tools manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

10 3. Detectable levels of DEHP and Lead are commonly found in and on the grips of  
11 tools that defendants manufacture, distribute, and offer for sale to consumers throughout the  
12 State of 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 February 27, 1987, California listed Lead pursuant to Proposition 65 as a  
19 chemical that is known to cause birth defects or other reproductive harm. Lead became subject  
20 to the "clear and reasonable warning" requirements of the act one year later on February 27,  
21 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
23 chemical that is known to cause birth defects or other reproductive harm. DEHP became  
24 subject to the "clear and reasonable warning" requirements of the act one year later on October  
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
26 25249.10(b). DEHP and Lead are referred to collectively hereinafter as the "LISTED  
27 CHEMICALS."  
28



1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
4 person in the course of doing business within the meaning of Health and Safety Code s sections  
5 25249.6 and 25249.11.

6 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
7 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
8 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
9 California.

10 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
11 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
12 and 25249.11.

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

16 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
17 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
18 and 25249.11.

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

21 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
22 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
24 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
25 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

3 27. Proposition 65 states, “[n]o person in the course of doing business shall  
4 knowingly and intentionally expose any individual to a chemical known to the state to cause  
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
6 individual . . . .” Health & Safety Code § 25249.6.

7 28. On July 5, 2013, plaintiff’s sixty-day notice of violation, together with the  
8 requisite certificate of merit, was provided to PROSPERITY TOOL and certain public  
9 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
10 containing the LISTED CHEMICALS, workers, consumers, and other individuals in the State  
11 of California were being exposed to the LISTED CHEMICALS resulting from their reasonably  
12 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
13 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
14 required by Proposition 65.

15 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
19 continuous in nature, and will continue to occur in the future.

20 30. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
21 enforcement agencies have failed to commence and diligently prosecute a cause of action  
22 against DEFENDANTS under Proposition 65.

23 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
24 or use in California by DEFENDANTS contain the LISTED CHEMICALS such that they  
25 require a “clear and reasonable” warning under Proposition 65.  
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1           32.   DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
3 CHEMICALS.

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

7           34.   The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
8 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are  
9 defined by title 27 of the California Code of Regulations, section 25602(b).

10          35.   DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
11 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact  
12 and/or ingestion.

13          36.   DEFENDANTS intend for such exposures to the LISTED CHEMICALS from the  
14 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental  
15 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
16 use to individuals in the State of California.

17          37.   DEFENDANTS failed to provide a "clear and reasonable warning" to those  
18 workers, consumers and other individuals in California not covered by California's  
19 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,  
20 exposed to the LISTED CHEMICALS as a result of their reasonably foreseeable uses of the  
21 PRODUCTS.

22          38.   Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
23 directly by California voters, workers, consumers, and other individuals exposed to the LISTED  
24 CHEMICALS through dermal contact and/or ingestion, resulting from the reasonably  
25 foreseeable uses of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable  
26 warning," have suffered, and continue to suffer, irreparable harm for which they have no plain,  
27 speedy, or adequate remedy at law.

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