

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff MARK
3 MOORBERG in the public interest of the citizens of the State of California to enforce the
4 People's right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate ("DEHP") and lead, toxic chemicals found in products sold by defendants
6 in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on tools with vinyl/PVC grips, goggles with vinyl/PVC components and lead present in and
10 on lens pouches manufactured, distributed, and offered for sale or use to consumers and other
11 individuals throughout the State of California.

12 3. Detectable levels of DEHP and/or lead are found in and on the aforementioned
13 products that defendants manufacture, distribute, and offer for sale to consumers and other
14 individuals throughout the State of California.

15 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
16 Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of
17 doing business shall knowingly and intentionally expose any individual to a chemical known to
18 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
19 warning to such individual . . ." Health & Safety Code § 25249.6.

20 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
21 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
22 subject to the "clear and reasonable warning" requirements of the act one year later on October
23 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
24 25249.10(b).

25 6. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
26 lead as a chemical known to cause birth defects (and other reproductive harm). Lead became
27 subject to the "clear and reasonable warning" requirements of the act one year later on February
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1 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
2 25249.10(b).

3 7. Defendants manufacture, distribute, import, sell, and offer for sale without health
4 hazard warning in California, tools with vinyl/PVC grips and goggles with vinyl/PVC
5 components containing DEHP that require a warning under Proposition 65 including, but not
6 limited to, the *Lincoln Electric Matador MIG Pliers, KH545, UPC #7 25636 41494, 5* and the
7 *Lincoln Electric Welders Goggles, KH625, UPC #7 25636 09571 7*. Defendants also
8 manufacture, distribute, import, sell, and offer for sale without a health hazard warning in
9 California, lens pouches containing lead that require a warning under Proposition 65 including,
10 but not limited to, the *Lincoln Electric Weld Lens Pouch, UPC #7 25636 09551 9*. All such
11 products containing DEHP and/or lead are referred to collectively hereinafter as "PRODUCTS."

12 8. Defendants' failure to warn consumers, workers and other individuals in the State
13 of California not covered by California's Occupational Safety Health Act, Labor Code section
14 6300 et seq. of the health hazards associated with exposures to DEHP and/or lead in conjunction
15 with defendants' sales of the PRODUCTS are violations of Proposition 65, and subject
16 defendants, and each of them, to enjoinder of such conduct as well as civil penalties for each
17 violation. Health & Safety Code § 25249.7(a) & (b)(1).

18 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
19 permanent injunctive relief to compel defendants to provide purchasers or users of the
20 PRODUCTS with the required warning regarding the health hazards associated with exposures
21 to DEHP and/or lead. Health & Safety Code § 25249.7(a).

22 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
23 penalties against defendants for their violations of Proposition 65.

PARTIES

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2 11. Plaintiff MARK MOORBERG is a citizen of the State of California who is
3 dedicated to protecting the health of California citizens through the elimination or reduction of
4 toxic exposures from consumer products; and he brings this action in the public interest
5 pursuant to Health and Safety Code section 25249.7(d).

6 12. Defendants LINCOLN ELECTRIC HOLDINGS, INC. and THE LINCOLN
7 ELECTRIC COMPANY (collectively "LINCOLN") are each a person in the course of doing
8 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

9 13. LINCOLN manufacture, import, distribute, sell, and/or offer the PRODUCTS for
10 sale or use in the State of California, or imply by their conduct that they manufacture, import,
11 distribute, sell, and/or offer the PRODUCTS for sale or use in the State of California.

12 14. Defendant J.W. HARRIS, CO., INC. ("HARRIS") is a person in the course of
13 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

14 15. HARRIS manufactures, imports, distributes, sells, and/or offers the PRODUCTS
15 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
16 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

17 16. Defendants DOES 51-100 ("MANUFACTURER DEFENDANTS") are each a
18 person in the course of doing business within the meaning of Health and Safety Code sections
19 25249.6 and 25249.11.

20 17. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
21 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
22 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
23 California.

24 18. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
25 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
26 and 25249.11.

1 enforcement agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS
2 containing DEHP and/or lead, purchasers and users in the State of California were being
3 exposed to DEHP and/or lead resulting from their reasonably foreseeable use of the
4 PRODUCTS, without the individual purchasers and users first having been provided with a
5 "clear and reasonable warning" regarding the harms associated with such exposures, as required
6 by Proposition 65.

7 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
8 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
9 violations have continued beyond their receipt of plaintiff's sixty-day notices of violation.
10 DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will continue in
11 the future.

12 33. After receiving plaintiff's sixty-day notices of violation, none of the appropriate
13 public enforcement agencies have commenced and diligently prosecuted a cause of action
14 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
15 subject of plaintiff's notices of violation.

16 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
17 offer for sale or use in California cause exposures to DEHP and/or lead as a result of the
18 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and
19 endured by consumers and other individuals in California are not exempt from the "clear and
20 reasonable" warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

21 35. DEFENDANTS knew or should have known that the PRODUCTS they
22 manufactured, imported, distributed, sold, and offered for sale or use in California contained
23 DEHP and/or lead.

24 36. DEHP and lead are present in or on the PRODUCTS in such a way as to expose
25 individuals to DEHP and/or lead through dermal contact and/or ingestion during reasonably
26 foreseeable uses of the PRODUCTS including through workplace exposure to PRODUCTS
27 containing lead.

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1 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, consumer exposures to DEHP and/or lead and workplace exposures to lead,
3 as defined by title 27 of the California Code of Regulations, section 25602(b).

4 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
5 the PRODUCTS exposed individuals to DEHP and/or lead through dermal contact and/or
6 ingestion.

7 39. DEFENDANTS intended that exposures to DEHP and lead from the reasonably
8 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
9 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
10 use to consumers and other individuals in California.

11 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those
12 consumers and other individuals in California who were or who would become exposed to
13 DEHP and lead through dermal contact and/or ingestion resulting from their use of the
14 PRODUCTS.

15 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
16 directly by California voters, individuals exposed to DEHP and/or lead through dermal contact
17 and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a
18 "clear and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable
19 harm for which they have no plain, speedy, or adequate remedy at law.

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

23 43. As a consequence of the above-described acts, Health and Safety Code
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.
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1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures DEHP and lead;

11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

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

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18 Dated: April 28, 2015

Respectfully Submitted,
THE CHANLER GROUP

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21 By: 

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Attorneys for Plaintiff
MARK MOORBERG