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FILED
2010 NOV -7 3:10
By: J. CAO-NGUYEN

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

MARK MOORBERG,

Plaintiff,

v.

WATTS WATER TECHNOLOGIES, INC.;
THE HOME DEPOT, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. 114CV269849

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

By Fax

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by plaintiff
3 MARK MOORBERG (“Moorberg”) in the public interest of the citizens of the State of
4 California to enforce the People’s right to be informed about exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical that is found in and on vinyl/PVC tubing sold
6 in California by defendants.

7 2. By this First Amended Complaint, Plaintiff seeks to remedy defendants’ failure
8 to warn California citizens, consumers, and other individuals about the risks associated with
9 exposures to DEHP from products manufactured, sold, distributed, and/or offered for sale or
10 use by defendants in California.

11 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC tubing
12 that defendants import, manufacture, distribute for sale, ship for sale, sell and/or offer for sale
13 throughout the State of California.

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

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

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without a
25 warning in California certain vinyl/PVC tubing containing the LISTED CHEMICAL,
26 including, without limitation, the *Watts Clear Vinyl Tubing, SVEB10, #42143210, UPC #0*
27

1 48643 02548 6. All such vinyl/PVC tubing containing the listed chemical is referred to
2 collectively hereinafter as the "PRODUCTS."

3 7. Defendants' failure to warn workers, consumers and other individuals in
4 California of the harms associated with exposures to the LISTED CHEMICAL in conjunction
5 with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL are violations
6 of Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil
7 penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, Plaintiffs seek preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of their
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to the LISTED CHEMICALS. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), Plaintiffs also seek civil
13 penalties against defendants, and each of them, for each violation of Proposition 65.

14 **PARTIES**

15 10. Plaintiff MARK MOORBERG is a citizen of the State of California who is
16 dedicated to protecting the health of California citizens through the elimination or reduction of
17 harmful exposures to toxic chemicals from consumer products. He brings this action in the
18 public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant WATTS WATER TECHNOLOGIES, INC. ("WATTS WATER
20 TECH") is a person in the course of doing business within the meaning of Health and Safety
21 Code sections 25249.6 and 25249.11.

22 12. WATTS WATER TECH manufactures, imports, distributes, sells, and/or offers
23 the PRODUCTS for sale or use in California, or it implies by its conduct that it manufactures,
24 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California.

1 **FIRST CAUSE OF ACTION**

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

3 26. Plaintiff realleges and incorporates by reference as if fully set forth herein,
4 Paragraphs 1 through 25, inclusive.

5 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
6 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

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

13 29. On April 16, 2014, plaintiff MARK MOORBERG served a sixty-day notice of
14 violation, together with the requisite certificate of merit, on WATTS WATER TECH, the
15 California Attorney General and other requisite public enforcement agencies stating that, as a
16 result of DEFENDANTS’ sales of the PRODUCTS containing DEHP, consumers, and other
17 individuals in the State of California are being exposed to the LISTED CHEMICAL resulting
18 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers
19 and users first having received a “clear and reasonable warning” regarding such toxic
20 exposures, as required by Proposition 65.

21 30. On August 28, 2014, plaintiff MARK MOORBERG served a supplemental
22 sixty-day notice of violation, together with the requisite certificate of merit, to WATTS
23 WATER TECH, THE HOME DEPOT, INC., the California Attorney General and other
24 requisite public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
25 PRODUCTS containing DEHP, consumers, and other individuals in the State of California are
26 being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable uses of

1 the PRODUCTS, without the individual purchasers and users first having received a “clear and
2 reasonable warning” regarding the health hazards associated with such toxic exposures, as
3 required by Proposition 65.

4 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
5 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
6 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
7 Plaintiff’s sixty-day notices of violation. As such, DEFENDANTS’ violations are ongoing and
8 continuous in nature, and will continue to occur in the future.

9 32. The sixty-day notice period applicable to each of Plaintiff’s n-day otices to
10 DEFENDANTS of violation concluded without any of the appropriate public enforcement
11 agencies having elected to commence and diligently prosecute a cause of action against of the
12 DEFENDANTS under Proposition 65.

13 33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that
15 the reasonably foreseeable uses of the PRODUCTS result in exposures that require a “clear and
16 reasonable” warning under Proposition 65.

17 34. DEFENDANTS knew or should have known that the PRODUCTS they
18 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.

19 35. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
20 through dermal contact and/or ingestion during and after their reasonably foreseeable use.

21 36. The normal and reasonably foresecable uses of the PRODUCTS have caused,
22 and continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
23 defined by title 27 of the California Code of Regulations, section 25602(b).

24 37. DEFENDANTS have knowledge that the normal and reasonably foreseeable
25 uses of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal
26 contact and/or ingestion.

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

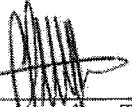
3. That the Court grant Plaintiffs his reasonable attorneys’ fees and costs; and

///

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

Dated: November 7, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher Tuttle
Attorneys for Plaintiff
MARK MOORBERG