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Parker Plaza, Suite 214 3 Berkeley, CA 94710-2565 Telephone: (510) 848-8880 Facsimile: (510) 848-8118 4 5 Attorneys for Plaintiff MARK MOORBERG 6 7 8 9 10 COUNTY OF SANTA CLARA 11 UNLIMITED CIVIL JURISDICTION 12 13 14 15 Case No. 114CV269849 MARK MOORBERG, 16 Plaintiff, 17 RELIEF 18 WATTS WATER TECHNOLOGIES, INC.; THE HOME DEPOT, INC.; and DOES 1-150, 19 inclusive, 20 Defendants. 21 22 23 24 25 26 27 28 FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE

(Health & Safety Code § 25249.6 et seq.)

NATURE OF THE ACTION

- 1. This First Amended Complaint is a representative action brought by plaintiff MARK MOORBERG ("Moorberg") in the public interest of the citizens of the State of California to enforce the People's right to be informed about exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical that is found in and on vinyl/PVC tubing sold in California by defendants.
- 2. By this First Amended Complaint, Plaintiff seeks to remedy defendants' failure to warn California citizens, consumers, and other individuals about the risks associated with exposures to DEHP from products manufactured, sold, distributed, and/or offered for sale or use by defendants in California.
- 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC tubing that defendants import, manufacture, distribute for sale, ship for sale, sell and/or offer for sale throughout the State of California.
- 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual" Health & Safety Code § 25249.6.
- 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a chemical that is known to cause birth defects or other reproductive harm. DEHP became subject to the "clear and reasonable warning" requirements of the act one year later on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
- 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without a warning in California certain vinyl/PVC tubing containing the LISTED CHEMICAL, including, without limitation, the *Watts Clear Vinyl Tubing, SVEB10, #42143210, UPC #0*

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

- 7. Defendants' failure to warn workers, consumers and other individuals in California of the harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL are violations of Proposition 65, and subject defendants to enjoinment of such conduct, as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).
- 8. For defendants' violations of Proposition 65, Plaintiffs seek preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of their PRODUCTS with the required warning regarding the health hazards associated with exposures to the LISTED CHEMICALS. Health & Safety Code § 25249.7(a).
- 9. Pursuant to Health and Safety Code section 25249.7(b), Plaintiffs also seek civil penalties against defendants, and each of them, for each violation of Proposition 65.

PARTIES

- 10. Plaintiff MARK MOORBERG is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of harmful exposures to toxic chemicals from consumer products. He brings this action in the public interest pursuant to Health and Safety Code section 25249.7(d).
- 11. Defendant WATTS WATER TECHNOLOGIES, INC. ("WATTS WATER TECH") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 12. WATTS WATER TECH manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California.

- 13. Defendant THE HOME DEPOT, INC. ("HOME DEPOT") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 14. HOME DEPOT manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California.
- 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design, assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in California.
- 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California, or each implies by its conduct that it distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California.
- 19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
- 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the State of California.

21. At this time, the true names of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

22. WATTS WATER TECH, HOME DEPOT, MANUFACTURER

DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are
collectively referred to hereinafter as "DEFENDANTS."

VENUE AND JURISDICTION

- 23. Venue is proper in the County of Santa Clara, pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because Plaintiffs seek civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with respect to their PRODUCTS.
- 24. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.
- 25. The California Superior Court has jurisdiction over DEFENDANTS based on Plaintiffs' information and good faith beliefs that each defendant is a person, firm, corporation or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

- 26. Plaintiff realleges and incorporates by reference as if fully set forth herein, Paragraphs 1 through 25, inclusive.
- 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."
- 28. Proposition 65 states, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual" Health & Safety Code § 25249.6.
- 29. On April 16, 2014, plaintiff MARK MOORBERG served a sixty-day notice of violation, together with the requisite certificate of merit, on WATTS WATER TECH, the California Attorney General and other requisite public enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing DEHP, consumers, and other individuals in the State of California are being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having received a "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.
- 30. On August 28, 2014, plaintiff MARK MOORBERG served a supplemental sixty-day notice of violation, together with the requisite certificate of merit, to WATTS WATER TECH, THE HOME DEPOT, INC., the California Attorney General and other requisite public enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing DEHP, consumers, and other individuals in the State of California are being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable uses of

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

- 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of Plaintiff's sixty-day notices of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to occur in the future.
- 32. The sixty-day notice period applicable to each of Plaintiff's n-day otices to DEFENDANTS of violation concluded without any of the appropriate public enforcement agencies having elected to commence and diligently prosecute a cause of action against of the DEFENDANTS under Proposition 65.
- 33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the reasonably foreseeable uses of the PRODUCTS result in exposures that require a "clear and reasonable" warning under Proposition 65.
- 34. DEFENDANTS knew or should have known that the PRODUCTS they manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.
- 35. DEHP is present in or on the PRODUCTS in such a way as to expose individuals through dermal contact and/or ingestion during and after their reasonably foreseeable use.
- 36. The normal and reasonably foresecable uses of the PRODUCTS have caused, and continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined by title 27 of the California Code of Regulations, section 25602(b).
- 37. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion.

- 38. DEFENDANTS intend for such exposures to the LISTED CHEMICALS from the reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental participation in the manufacture, distribution, sale, and/or offering of the PRODUCTS for sale or use to workers, consumers and other individuals in the State of California.
- 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those workers, consumers, and other individuals in California not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to the LISTED CHEMICAL.
- 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, workers, consumers, and other individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion as a result of their reasonably foreseeable uses of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.
- 41. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per day for each violation.
- 42. As a consequence of the above-described acts, Health and Safety Code section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

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	2.	That the Court, pursuant to Health and Safety Code section 25249.7(a),
prelimi	narily	and permanently enjoin each of the DEFENDANTS from manufacturing,
distribu	iting, c	or offering the PRODUCTS for sale or use in California without first providing a
"clear a	and rea	sonable 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 ______, 2014

Respectfully Submitted, THE CHANLER GROUP

Christopher Tuttle Attorneys for Plaintiff MARK MOORBERG