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10 MARK MOORBERG

ENDORSED

2015 JAN 14 P 1:43

David S. Stokard, Clerk of the Superior Court  
County of Santa Clara, California  
By: STOKARD Deputy Clerk

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

14 MARK MOORBERG,

15 Plaintiff,

16 v.

17 RGH ENTERPRISES, INC. and DOES 1-150,  
18 inclusive

19 Defendants.

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

115 CV 2755 97

21 **COMPLAINT FOR CIVIL PENALTIES  
22 AND INJUNCTIVE RELIEF**

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

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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic  
5 chemical that is found in vinyl/PVC pants that are 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 present in and on the vinyl/PVC  
8 pants manufactured, distributed, and offered for sale or use to consumers throughout the State of  
9 California.

10 3. Detectable levels of DEHP are commonly found in and on vinyl/PVC pants that  
11 defendants import, manufacture, distribute, ship, sell and offer for sale to consumers throughout  
12 the 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 October 24, 2003, pursuant to Proposition 65, California identified and listed  
19 DEHP as a chemical known to cause birth defects or other reproductive harm. DEHP became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on October  
21 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, import, sell, and offer for sale without  
24 warning in California, vinyl/PVC pants containing the LISTED CHEMICAL, including, but not  
25 limited to, the *Invacare Waterproof Vinyl Pull-On Pant, ISG-3024870, UPC #0 16167 97487 0*.  
26 All such vinyl/PVC pants containing the LISTED CHEMICAL are referred to collectively  
27 hereinafter as the “PRODUCTS.”  
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
5 and 25249.11.

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

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
10 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
11 and 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

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

19 20. RGH, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
20 and RETAILER DEFENDANTS are hereinafter collectively referred to as “DEFENDANTS.”

### 21 VENUE AND JURISDICTION

22 21. Venue is proper in the Santa Clara County, pursuant to Code of Civil Procedure  
23 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
24 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
25 wrongful conduct occurred, and continue to occur, in this county, and/or because  
26 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with  
27 respect to the PRODUCTS.  
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1 PRODUCTS, without the individual purchasers and users first having received a “clear and  
2 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

11 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
12 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
13 reasonably foreseeable use of these products results in exposures that require a “clear and  
14 reasonable” warning under Proposition 65.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they  
16 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
17 CHEMICAL.

18 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
19 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

20 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
21 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
22 defined by title 27 of the California Code of Regulations, section 25602(b).

23 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
24 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
25 and/or ingestion.

26 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
27 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental  
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1 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
2 use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and other individuals in California who have been, or will be, exposed to the  
5 LISTED CHEMICAL.

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

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

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

18 **PRAYER FOR RELIEF**

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

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

23 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
25 offering the PRODUCTS for sale or use in California without first providing a “clear and  
26 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
27 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;  
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: January 9<sup>th</sup>, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Brian Johnson  
Attorneys for Plaintiff  
MARK MOORBERG