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JOHN MOORE

**ENFORCED  
FILED  
ALAMEDA COUNTY**

**FEB 25 2015**

CLERK OF THE SUPERIOR COURT  
**Anita Dhir**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,  
Plaintiff,  
v.  
EMERGING VISION, INC., and DOES 1-150,  
inclusive,  
Defendants.

Case No. **RG 15759993**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code § 25249.6 *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”), a toxic chemical that is found  
5 in vinyl eyewear cases 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 vinyl eyewear  
8 cases 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 eyewear cases  
11 that defendants import, manufacture, distribute, ship, sell and offer for sale to consumers  
12 throughout 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 eyewear cases containing the LISTED CHEMICAL, including, but  
25 not limited to, the *Site For Sore Eyes Eyewear Case, Black*. All such vinyl eyewear cases  
26 containing the LISTED CHEMICAL are referred to collectively hereinafter as the  
27 “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. EVI, 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 County of Alameda, 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 Alameda with respect to the  
27 PRODUCTS.

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1           22. The California Superior Court has jurisdiction over this action pursuant to  
2 California Constitution Article VI, section 10, which grants the Superior Court “original  
3 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
4 which this action is brought does not specify any other basis of subject matter jurisdiction.

5           23. The California Superior Court has jurisdiction over DEFENDANTS based on  
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
7 association that is a citizen of the State of California, has sufficient minimum contacts in the  
8 State of California, and/or otherwise purposefully avails itself of the California market.  
9 DEFENDANTS’ purposeful avilment renders the exercise of personal jurisdiction by  
10 California courts consistent with traditional notions of fair play and substantial justice.

11   **FIRST CAUSE OF ACTION**

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

13           24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
14 Paragraphs 1 through 23, inclusive.

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

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

23           27. On September 30, 2014, plaintiff’s sixty-day notice of violation, together with the  
24 requisite certificate of merit, was provided to EVI and the requisite public enforcement agencies  
25 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED  
26 CHEMICAL, consumers and other individuals in the State of California are being exposed to  
27 the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,  
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1 without the individual purchasers and users first having received a “clear and reasonable  
2 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 uses of these products result 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;

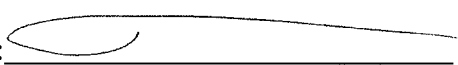
23 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
25 offering the PRODUCTS for sale or use in California without first providing a “clear and  
26 reasonable warning” as defined by title 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: February 25, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Jonathan A. Bornstein  
Attorneys for Plaintiff  
JOHN MOORE