Clifford Chanler, State Bar No. 135534
O'Neil Dennis, State Bar No. 256636
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
Email: cliff@chanler.com
Email: oneil@chanler.com

Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 17 2016

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

JOHN MOORE, Plaintiff, v. TOTAL RESOURCES INTERNATIONAL INC.; and DOES 1-150, inclusive, Defendants.	Case No. CGC-16-550996 **COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF** (Health & Safety Code § 25249.6 *et seq.*)

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff JOHN MOORE in the public interest of the citizens of the State of California to enforce the People's right to be informed about exposures to diisononyl phthalate ("DINP"), a toxic chemical that is found in the vinyl/PVC gloves sold in California.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn California citizens about the risks of exposures to DINP present in and on the vinyl/PVC gloves manufactured, distributed, and offered for sale or use to consumers throughout the State of California.

3. Detectable levels of DINP are commonly found in and on the vinyl/PVC gloves that defendants import, manufacture, distribute, ship, sell and offer for sale to consumers 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. Pursuant to Proposition 65, on December 20, 2013, California identified and listed DINP as a chemical known to cause cancer. DINP became subject to the "clear and reasonable warning" requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6. Defendants manufacture, distribute, import, sell, and offer for sale without warning in California, vinyl/PVC gloves containing DINP, including, but not limited to, the *50-Person Industrial-Construction First Aid Kit (Gloves), Item #10-HBC-01059, UPC No. 0 20424 10159 6.* All such vinyl/PVC gloves containing DINP are 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 DINP in conjunction with defendants' sales of the PRODUCTS containing DINP 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, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards associated with exposures to DINP. Health & Safety Code § 25249.7(a).

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

PARTIES

10. Plaintiff JOHN MOORE 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 Total Resources International Inc. ("TOTAL RESOURCES") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

12. TOTAL RESOURCES manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

13. 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.

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

15. 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.

16. DISTRIBUTOR DEFENDANTS 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.

17. 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.

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

19. 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.

20. TOTAL RESOURCES, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as "DEFENDANTS."

VENUE AND JURISDICTION

21. Venue is proper in the County of San Francisco, pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks 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 San Francisco with respect to the PRODUCTS.

22. 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.

23. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief 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)

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

25. 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."

26. 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.

27. On December 22, 2014, plaintiff's sixty-day notice of violation, together with the requisite certificate of merit, was provided to TOTAL RESOURCES, and the requisite public

enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing DINP, workers, consumers and other individuals in the State of California are being exposed to DINP resulting from their reasonably foreseeable use 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.

28. 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 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and, unless enjoined, will continue to occur in the future.

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

30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or use in California by DEFENDANTS contain DINP in such a way that the reasonably foreseeable uses of these products result in exposures that require a "clear and reasonable" warning under Proposition 65.

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

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

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

34. DEFENDANTS have knowledge that the normal and reasonably foreseeable use of the PRODUCTS exposes individuals to DINP through dermal contact and/or ingestion.

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

36. DEFENDANTS failed to provide a "clear and reasonable warning" to those workers, consumers and other individuals in California who have been, or will be, exposed to DINP.

37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, consumers, and other individuals exposed to DINP through dermal contact and/or ingestion, resulting from the reasonably foreseeable use 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.

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

39. 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;

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin 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 DINP;

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: March 16, 2016

Respectfully Submitted,

THE CHANLER GROUP

By:_____
O'Neil Dennis
Attorneys for Plaintiff
JOHN MOORE