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JOHN MOORE

ENDORSED

2016 FEB -4 P 1:16

Sharon Ulleselt

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

JOHN MOORE,

Plaintiff,

v.

NAMASTE LABORATORIES, L.L.C.; and  
DOES 1-150, inclusive,

Defendants.

Case No. **16CV291196**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

By Fax

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiff John Moore in the  
3 public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to diisononyl phthalate (“DINP”), a toxic  
5 chemical found in and on the vinyl/PVC gloves sold by defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendants’ continuing failure to  
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code  
8 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of  
9 exposure to DINP present in and on the vinyl/PVC gloves manufactured, distributed, and  
10 offered for sale or use throughout the State of California. Individuals not covered by  
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,  
12 use or handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of DINP are found in and on the vinyl/PVC gloves that  
14 defendants manufacture, distribute, and offer for sale to consumers throughout the State of  
15 California.

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

21 5. Pursuant to Proposition 65, on December 20, 2013, California identified and listed  
22 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable  
23 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,  
24 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
26 hazard warnings in California, vinyl/PVC gloves that contain DINP including, but not limited  
27 to, *ORS Olive Oil Built-In Protection No-Lye Hair Relaxer (Gloves)*, UPC #6 32169 11099 5.  
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1 All such vinyl/PVC gloves containing DINP are referred to collectively hereinafter as  
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health  
4 hazards associated with exposures to DINP in conjunction with defendants’ sales of the  
5 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
7 § 25249.7(a) & (b)(1).

8 8. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with  
10 the required warning regarding the health hazards associated with exposures to DINP. Health &  
11 Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil  
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

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

19 11. Defendant NAMASTE LABORATORIES, L.L.C. (“NAMASTE”) is a person in  
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
21 and 25249.11.

22 12. NAMASTE manufactures, imports, distributes, sells, and/or offers the  
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
24 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
25 State of California.

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1           13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
2 person in the course of doing business within the meaning of Health and Safety Code sections  
3 25249.6 and 25249.11.

4           14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
5 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,  
6 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for  
7 sale or use in California.

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

11           16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
12 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
13 retailers for sale or use in the State of California, or each implies by its conduct that it  
14 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to  
15 individuals, businesses, or retailers for sale or use in the State of California.

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

19           18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
20 individuals in the State of California.

21           19. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
22 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
24 allege, that each of the fictitiously named defendants is responsible for the acts and occurrences  
25 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
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1           25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
4 harm.”

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

9           27. On December 22, 2014, Plaintiff served a sixty-day notice of violation, together  
10 with the accompanying certificate of merit, on NAMASTE, California Attorney General’s  
11 Office, and the requisite public enforcement agencies alleging that, as a result of  
12 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being  
13 exposed to DINP resulting from their reasonably foreseeable use of the PRODUCTS, without  
14 the consumers first receiving a “clear and reasonable warning” regarding the harms associated  
15 with exposures to DINP, as required by Proposition 65.

16           28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
17 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
18 violations have continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As  
19 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined  
20 will continue in the future.

21           29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement  
22 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
23 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of  
24 violation.

25           30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
26 offer for sale or use in California cause exposures to DINP as a result of the reasonably  
27 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
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1 consumers in California are not exempt from the “clear and reasonable” warning requirements  
2 of Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

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

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

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

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

12 35. DEFENDANTS intend that exposures to DINP from the reasonably foreseeable  
13 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
14 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
15 consumers in California.

16 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
17 consumers in California who have been, or who will be, exposed to DINP through dermal  
18 contact and/or ingestion resulting from their use of the PRODUCTS.

19 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
20 directly by California voters, consumers exposed to DINP through dermal contact and/or  
21 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear  
22 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
23 for which they have no plain, speedy, or adequate remedy at law.

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

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