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ENGROSSED
FILED

AUG -4 2015

Superior Court
County of Santa Clara
By _____

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

115CV283927

JOHN MOORE,

Plaintiff,

v.

DAS COMPANIES, INC.; and DOES 1-150,
inclusive,

Defendants.

) Case No. _____
)
) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
)
) (Health & Safety Code § 25249.5 *et seq.*)
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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 of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a
5 toxic chemical found in tools with vinyl/PVC grips 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 DEHP present in and on tools with vinyl/PVC grips that are manufactured,
10 distributed, and offered for sale or use throughout the State of California. Individuals not
11 covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who
12 purchase, use or handle defendants’ products, are referred to hereinafter as “consumers”.

13 3. Detectable levels of DEHP are found in and on the tools with vinyl/PVC grips
14 that defendants manufacture, distribute, and offer for sale without a warning to consumers
15 throughout the State of 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. On October 24, 2003, California identified and listed DEHP pursuant to
22 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP
23 became subject to the “clear and reasonable warning” requirements of the act one year later on
24 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 &
25 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
27 hazard warnings in California, tools with vinyl/PVC grips containing DEHP including, but not
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1 limited to, the *RoadPro 44-Piece Terminal Kit, RPTK2, UPC #0 45464 23357 1*. All tools with
2 vinyl/PVC grips containing DEHP are referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers in the State of California of the health
4 hazards associated with exposures to DEHP 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 DEHP. 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 DAS COMPANIES, INC. ("DAS") is a person in the course of doing
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

24 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
25 person in the course of doing business within the meaning of Health and Safety Code sections
26 25249.6 and 25249.11.

1 wrongful conduct occurred, and continue to occur, in this county, and/or because
2 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
3 respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

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

26 27. On February 27, 2015, plaintiff served a sixty-day notice of violation, together
27 with the requisite certificate of merit, on DAS and certain public enforcement agencies alleging
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1 that, as a result of DEFENDANTS' sales of the PRODUCTS containing DEHP, consumers in
2 the State of California were being exposed to DEHP resulting from their reasonably foreseeable
3 use of the PRODUCTS, without the consumers first having been provided with a "clear and
4 reasonable warning" regarding the harms associated with such exposures, as required by
5 Proposition 65.

6 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
7 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
8 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation.
9 DEFENDANTS' violations are ongoing and continuous in nature and, as such, will continue in
10 the future.

11 29. After receiving plaintiff's sixty-day notice of violation, no public enforcement
12 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
13 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of
14 violation.

15 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
16 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
17 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
18 consumers in California are not exempt from the "clear and reasonable" warning requirements
19 of Proposition 65, yet DEFENDANTS provide no warning.

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

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

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

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1 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
2 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

3 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
4 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
5 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
6 consumers in California.

7 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
8 consumers in California who were or who would become exposed to DEHP through dermal
9 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

21 **PRAYER FOR RELIEF**

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

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

26 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
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1 offering the PRODUCTS for sale or use in California without first providing a “clear and
2 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
3 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

4 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
5 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
6 currently in the chain of commerce in California without a “clear and reasonable warning” as
7 defined by California Code of Regulations title 27, section 25601 *et seq.*;

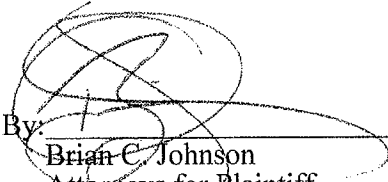
8 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

9 5. That the Court grant such other and further relief as may be just and proper.

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Dated: August 4, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
JOHN MOORE