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JOHN MOORE

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 20 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, Deputy

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

JOHN MOORE,

Plaintiff,

v.

DEZINE NEWS, INC. and DOES 1-150,
inclusive,

Defendants.

) Case No. RG 15778467

) **COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff JOHN MOORE
3 (“MOORE”) in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC belts sold by defendants
6 in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on vinyl/PVC belts manufactured, distributed, and offered for sale or use to consumers and
10 other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC belts that
12 defendants manufacture, distribute, and offer for sale to consumers and other individuals
13 throughout the State of California.

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

19 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
21 subject to the “clear and reasonable warning” requirements of the act one year later on October
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
23 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
25 hazard warnings in California, vinyl/PVC belts including, but not limited to, the *George*
26 *Reversible Belt, UL13A457-408, UPC #8 83449 15547 6* containing DEHP. All vinyl/PVC
27 belts containing DEHP are referred to collectively hereinafter as “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. DEZINE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
21 referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
24 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
25 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
26 wrongful conduct occurred, and continue to occur, in this county, and/or because
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1 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect
2 to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

10 29. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
11 public enforcement agencies have commenced and diligently prosecuted a cause of action
12 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
13 subject of plaintiff’s notice of violation.

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

19 31. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufactured, imported, distributed, sold, and offered for sale or use in California contained
21 DEHP.

22 32. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
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 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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11 Dated: July 14, 2015

Respectfully Submitted,
THE CHANLER GROUP

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14 By: 

15 Josh Voorhees
16 Attorneys for Plaintiff
17 JOHN MOORE
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