

By Fax COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chris Tuttle, State Bar No. 264545
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

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

JOHN MOORE,

Plaintiff,

v.

NCH CORPORATION; DANCO, INC.; and
DOES 1-150, inclusive,

Defendants

) Case No. **RG 15780151**
) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
) (Health & Safety Code § 25249.5 et seq.)

ENDORSED
FILED
ALAMEDA COUNTY
JUL 31 2015
CLERK OF THE SUPERIOR COURT
Anita Dhir

NATURE OF THE ACTION

1
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 vinyl/PVC hoses sold by defendants in
6 California.

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

14 3. Detectable levels of DEHP are found in and on vinyl/PVC hoses that defendants
15 manufacture, distribute, and offer for sale without a warning to consumers throughout the State
16 of California.

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

22 5. On October 24, 2003, California identified and listed DEHP pursuant to
23 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP
24 became subject to the “clear and reasonable warning” requirements of the act one year later on
25 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 14. DANCO manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
5 person in the course of doing business within the meaning of Health and Safety Code sections
6 25249.6 and 25249.11.

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

11 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

14 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
15 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
16 in the State of California.

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

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

22 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
23 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
24 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
25 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
26 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 29. On May 21, 2015, plaintiff served a sixty-day notice of violation, together with
8 the requisite certificate of merit, on NCH, DANCO and certain public enforcement agencies
9 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP,
10 consumers in the State of California were being exposed to DEHP resulting from their
11 reasonably foreseeable use of the PRODUCTS, without the consumers first having been
12 provided with a “clear and reasonable warning” regarding the harms associated with such
13 exposures, as required by Proposition 65.

14 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
15 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
16 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
17 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
18 the future.

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

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

1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufactured, imported, distributed, sell, and offer for sale or use in California contain DEHP.

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

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

8 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

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

14 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in California who were or who would become exposed to
16 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

25 41. As a consequence of the above-described acts, Health and Safety Code
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 DEFENDANTS.
28

1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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

16 5. That the Court grant such other and further relief as may be just and proper.
17
18

19 Dated: July 31, 2015

Respectfully Submitted,
THE CHANLER GROUP

21
22 By: 
23 Chris Tuttle
24 Attorneys for Plaintiff
25 JOHN MOORE
26
27
28