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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 06 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.

POLYFORM PRODUCTS COMPANY, INC.,

Defendant.

Case No. RG 15792473

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *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 of the health hazards caused by exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl/PVC art tool pouches sold by defendant in California.

2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendant's products, about the risks of exposure to DEHP present in and on the vinyl/PVC art tool pouches manufactured, distributed, and offered for sale or use throughout the State of California. Individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendant's products, are referred to hereinafter as "consumers."

3. Detectable levels of DEHP are found in and on the vinyl/PVC art tool pouches that defendant manufactures, distributes, and offers 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 October 24, 2003, California identified and listed DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became subject to the "clear and reasonable warning" requirements of the act one year later on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6. Defendant manufactures, distributes, imports, sells, and offers for sale without health hazard warnings in California, vinyl/PVC art tool pouches containing DEHP such as, but

1 not limited to, the *Sculpey 8 Piece Clay Tool Set, A8PS, #179480813, UPC #7 15891 14048* 2  
2 collectively hereinafter as “PRODUCTS.”

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

8 8. For defendant’s violations of Proposition 65, plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendant 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 defendant for its 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 POLYFORM PRODUCTS COMPANY, INC. (“POLYFORM”) is a  
20 person in the course of doing business within the meaning of Health and Safety Code sections  
21 25249.6 and 25249.11.

22 12. POLYFORM 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.

26 13. POLYFORM shall hereinafter, where appropriate, be referred to as the  
27 “DEFENDANT.”  
28

1 **VENUE AND JURISDICTION**

2 14. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil  
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because plaintiff seeks civil penalties against DEFENDANT, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANT  
6 conducts business in Alameda County with respect to the PRODUCTS.

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

25 19. Proposition 65 states, "[n]o person in the course of doing business shall  
26 knowingly and intentionally expose any individual to a chemical known to the state to cause  
27  
28

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual . . . .” Health & Safety Code § 25249.6.

3 20. On February 27, 2015, plaintiff served a sixty-day notice of violation, together  
4 with the accompanying certificate of merit, on POLYFORM, the California Attorney General’s  
5 Office, and the requisite public enforcement agencies alleging that, as a result of  
6 DEFENDANT’S sales of the PRODUCTS, consumers in the State of California are being  
7 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without  
8 the consumers first receiving a “clear and reasonable warning” regarding the harms associated  
9 with exposures to DEHP, as required by Proposition 65.

10 21. DEFENDANT manufactures, imports, distributes, sells, and offers the  
11 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
12 DEFENDANT’S violations have continued beyond its receipt of plaintiff’s sixty-day notice of  
13 violation. As such, DEFENDANT’S violations are ongoing and continuous in nature and,  
14 unless enjoined will continue in the future.

15 22. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANT under  
17 Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
18 violation.

19 23. The PRODUCTS that DEFENDANT manufactures, imports, distributes, sells,  
20 and offers for sale or use in California cause exposures to DEHP as a result of the reasonably  
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANT and endured by  
22 consumers in California are not exempt from the “clear and reasonable” warning requirements  
23 of Proposition 65, yet DEFENDANT provides no warning.

24 24. DEFENDANT knew or should have known that the PRODUCTS it manufactures,  
25 imports, distributes, sells, and offers for sale in California contain DEHP.

26 25. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
27 through dermal contact and/or ingestion during reasonably foreseeable use.  
28

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

4           27. DEFENDANT knows that the normal and reasonably foreseeable use of the  
5 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

6           28. DEFENDANT intends that exposures to DEHP from the reasonably foreseeable  
7 use of the PRODUCTS will occur by its deliberate, non-accidental participation in the  
8 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
9 consumers in California.

10          29. DEFENDANT failed to provide a “clear and reasonable warning” to those  
11 consumers in California who have been, or who will be, exposed to DEHP through dermal  
12 contact and/or ingestion resulting from their use of the PRODUCTS.

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

18          31. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
19 above-described acts, DEFENDANT is liable for a maximum civil penalty of \$2,500 per day for  
20 each violation.

21          32. As a consequence of the above-described acts, Health and Safety Code  
22 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
23 DEFENDANTS.

24                                   **PRAYER FOR RELIEF**

25          Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

26          1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
27 civil penalties against DEFENDANT in the amount of \$2,500 per day for each violation;  
28

1           2.     That the Court, pursuant to Health and Safety Code section 25249.7(a),  
2     preliminarily and permanently enjoin DEFENDANT from manufacturing, distributing, or  
3     offering the PRODUCTS for sale or use in California without first providing a “clear and  
4     reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
5     25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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

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

12     Dated: November 5, 2015

Respectfully submitted,  
THE CHANLER GROUP

By: 

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Attorneys for Plaintiff  
JOHN MOORE