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Clifford A. Chanler, State Bar No. 135534
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
MARK MOORBERG

ENDORSED
2015 DEC -3 P 2: 59
Sharon Ulleselt

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

MARK MOORBERG,

Plaintiff,

v.

REXNORD CORPORATION; RBS
GLOBAL, INC.; ZURN INDUSTRIES, INC.;
and DOES 1-150, inclusive,

Defendants.

Case No. **115CV288688**

**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 Mark Moorberg 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 and on the vinyl/PVC tool 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 the vinyl/PVC tool grips 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 DEHP are found in and on the vinyl/PVC tool grips 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 October 24, 2003, California identified and listed
22 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
23 subject to the “clear and reasonable warning” requirements of the act one year later on October
24 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); 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, vinyl/PVC tool grips that contain DEHP including, but not
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1 limited to, *Zurn Multi-Head Crimp Tool Kit*. All such vinyl/PVC tool grips containing DEHP
2 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 MARK MOORBERG is a citizen of the State of California who is
16 dedicated to protecting the health of California citizens through the elimination or reduction of
17 toxic exposures from consumer products; and he brings this action in the public interest
18 pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant REXNORD Corporation (“REXNORD”) is a person in the course of
20 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

25 13. Defendant RBS Global, Inc. (“RBS”) is a person in the course of doing business
26 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

1 14. RBS manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
2 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. Defendant Zurn Industries, Inc. ("ZURN") is a person in the course of doing
5 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

6 16. ZURN manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
7 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
8 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

9 17. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
10 person in the course of doing business within the meaning of Health and Safety Code sections
11 25249.6 and 25249.11.

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

16 19. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
17 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
18 and 25249.11.

19 20. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
20 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
21 retailers for sale or use in the State of California, or each implies by its conduct that it
22 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
23 individuals, businesses, or retailers for sale or use in the State of California.

24 21. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
25 the course of doing business within the meaning of Health and Safety Code sections 25249.6
26 and 25249.11.

1 22. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
2 individuals in the State of California.

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

8 24. REXNORD, RBS, ZURN, MANUFACTURER DEFENDANTS,
9 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where
10 appropriate, be referred to collectively as the “DEFENDANTS.”

11 **VENUE AND JURISDICTION**

12 25. Venue is proper in the Superior Court for the County of Santa Clara pursuant to
13 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
14 competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because
15 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
16 and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara
17 with respect to the PRODUCTS.

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

22 27. The California Superior Court has jurisdiction over DEFENDANTS based on
23 Plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm,
24 corporation or association that is a citizen of the State of California, has sufficient minimum
25 contacts in the State of California, and/or otherwise purposefully avails itself of the California
26 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
27 California courts consistent with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

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

3 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 27, inclusive.

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

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

13 31. On July 31, 2015, Plaintiff served a sixty-day notice of violation, together with
14 the accompanying certificate of merit, on REXNORD, RBS, ZURN, California Attorney
15 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
16 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
17 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
18 the consumers first receiving a “clear and reasonable warning” regarding the harms associated
19 with exposures to DEHP, as required by Proposition 65.

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

25 33. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
26 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
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1 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of
2 violation.

3 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
6 consumers in California are not exempt from the "clear and reasonable" warning requirements
7 of Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

8 35. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

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

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

15 38. DEFENDANTS know that the normal and reasonably foreseeable use of the
16 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

17 39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
18 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
19 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
20 consumers in California.

21 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 consumers in California who have been, or who will be, exposed to DEHP through dermal
23 contact and/or ingestion resulting from their use of the PRODUCTS.

24 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
25 directly by California voters, consumers exposed to DEHP through dermal contact and/or
26 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
27 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm
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1 for which they have no plain, speedy, or adequate remedy at law.

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

5 43. As a consequence of the above-described acts, Health and Safety Code
6 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
7 DEFENDANTS

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
15 offering the PRODUCTS for sale or use in California without first providing a “clear and
16 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
17 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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

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

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1 Dated: December 2, 2015

2 Respectfully submitted,
3 THE CHANLER GROUP

4 By: 
5 Clifford Chanler
6 Attorneys for Plaintiff
7 MARK MOORBERG
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