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ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By Cicell Johnson
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

JOHN MOORE, Plaintiff, v. BERETTA U.S.A. CORP., and DOES 1-150, inclusive, Defendants.	Case No. RG16802995 **COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF** (Health & Safety Code § 25249.6 *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 about exposures to "lead" — a toxic chemical found in choke tube wrenches sold in California.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants' products, about the risks of exposures to lead present in and on choke tube wrenches manufactured, distributed, and offered for sale or use to consumers throughout the State of California. Individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants' products, are referred to hereinafter as "consumers."

3. Detectable levels of lead are commonly found in and on choke tube wrenches that defendants import, manufacture, distribute, ship, sell and offer 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 § 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 February 27, 1987, California identified and listed lead as a chemical known to cause birth defects and other reproductive harm. Lead became subject to the "clear and reasonable warning" requirements of the act one year later on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). Lead is referred to hereinafter as the "LISTED CHEMICAL."

6. Defendants manufacture, distribute, import, sell, and offer for sale without warning in California, choke tube wrenches containing the LISTED CHEMICAL, including, but not limited to, the *Beretta Choke Tube Wrench with Thread Chaser, 12GA, E00333, UPC #0 82442 75819 0.* All

such choke tube wrenches containing the LISTED CHEMICAL are referred to collectively hereinafter as the "PRODUCTS."

7. Defendants' failure to warn consumers in California of the harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL are violations of Proposition 65, and subject defendants to enjoinment of such conduct, as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the required warning regarding the health hazards associated with exposures to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

9. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil penalties against defendants, and each of them, for each violation of Proposition 65.

PARTIES

10. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of harmful exposures to toxic chemicals from consumer products. He brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Beretta U.S.A. Corp. ("BERETTA") is a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

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

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

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

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

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

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

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

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

20. BERETTA, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as "DEFENDANTS."

VENUE AND JURISDICTION

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

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

23. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or

association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

26. Proposition 65 states, "[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.

27. On September 15, 2015, plaintiff's supplemental sixty-day notice of violation, together with the requisite certificate of merit, was provided to BERETTA and the requisite public enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the LISTED CHEMICAL, consumers in the State of California are being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first having received a "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of plaintiff's supplemental sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and, unless enjoined, will continue to occur in the future.

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29. After receiving plaintiff's supplemental sixty-day notice of violation, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

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

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

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

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

34. DEFENDANTS have knowledge that the normal and reasonably foreseeable use of the PRODUCTS exposes consumers to the LISTED CHEMICAL through dermal contact and/or ingestion.

35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in the State of California.

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

37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, consumers exposed to the LISTED CHEMICAL through dermal contact and/or ingestion, resulting from their reasonably foreseeable use of the PRODUCTS sold by

DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

4. That the Court gr ant such other and further relief as may be just and proper.

Dated: February 5, 2016

Respectfully Submitted,

THE CHANLER GROUP

By: _____
Laraleh Paras
Attorneys for Plaintiff
JOHN MOORE