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FILED

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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,
14

15 Plaintiff,

16 v.

17 ATLAS COPCO NORTH AMERICA LLC;
18 CHICAGO PNEUMATIC TOOL
19 COMPANY, LLC; and DOES 1-150,
inclusive,

20 Defendants.

Case No. CIV 1600164 -

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *et seq*)

NATURE OF THE ACTION

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

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

12 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC
13 components of the gloves that defendants import, manufacture, distribute, ship, sell and/or offer
14 for sale to consumers throughout California.

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

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

25 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without
26 warning in California, gloves with vinyl/PVC components containing DEHP, including, but not
27 limited to, the *Chicago Pneumatic Impact Gloves, CP300XXL, Part # 8940171573*. All such
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1 gloves with vinyl/PVC components containing DEHP are referred to collectively hereinafter as
2 the "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in California of the
4 harms associated with exposures to DEHP in conjunction with defendants' sales of the
5 PRODUCTS containing DEHP constitute violations of Proposition 65, and subject defendants,
6 and each of them, to enjoinder of such conduct, as well as the imposition of civil penalties for
7 each violation. Health & Safety Code § 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 with the required
10 warning regarding the health hazards associated with exposures to DEHP from the
11 PRODUCTS. Health & 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, and each of them, for their 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 harmful
17 exposures to toxic chemicals from consumer products. He brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant ATLAS COPCO NORTH AMERICA LLC ("ATLAS COPCO") 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. ATLAS COPCO manufactures, imports, distributes, sells, and/or offers the
23 PRODUCTS for sale or use in California, or it implies by its conduct that it manufactures,
24 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California.

25 13. Defendant CHICAGO PNEUMATIC TOOL COMPANY, LLC ("CHICAGO
26 PNEUMATIC") is a person in the course of doing business within the meaning of Health and
27 Safety Code sections 25249.6 and 25249.11.

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

5 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code sections
7 25249.6 and 25249.11.

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

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

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

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

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

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 alleged herein. When ascertained, their true names shall be reflected in an amended pleading.
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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 October 21, 2015, plaintiff’s sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to ATLAS COPCO, CHICAGO PNEUMATIC and
9 the requisite public enforcement agencies stating that, as a result of DEFENDANTS’ sales of
10 the PRODUCTS containing DEHP, consumers and other individuals in the State of California
11 were being exposed to DEHP resulting from their reasonably foreseeable use of the
12 PRODUCTS, without the individual purchasers and users first having received a “clear and
13 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

14 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
15 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code
16 section 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt
17 of plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing
18 and continuous in nature, and will continue to occur in the future.

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

22 32. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
23 sale or use in California by DEFENDANTS contain DEHP in such a way that the reasonably
24 foreseeable use of the PRODUCTS results in exposures that require a “clear and reasonable”
25 warning under Proposition 65. DEFENDANTS’ violations of Proposition 65, resulting from
26 their failure to provide warnings to consumers exposed to DEHP from the PRODUCTS have
27 continued since as far back as October 21, 2012.

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1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and/or 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 individuals
4 through dermal contact and/or ingestion during and after 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 such exposures are defined by title 27 of
7 the California Code of Regulations section 25602(b).

8 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
9 of the PRODUCTS expose consumers and other individuals to DEHP through dermal contact
10 and/or ingestion.

11 37. DEFENDANTS intend for such exposures to DEHP from the reasonably
12 foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental participation in
13 the manufacture, distribution, sale, and/or offering of the PRODUCTS for sale or use to
14 consumers and other individuals in the State of California.

15 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
16 consumers and other individuals in California not covered by California’s Occupational Safety
17 Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to DEHP as a
18 result of their reasonably foreseeable use of DEFENDANTS’ PRODUCTS.

19 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
20 directly by California voters, consumers, and other individuals exposed to DEHP through
21 dermal contact and/or ingestion, resulting from the reasonably foreseeable use of the
22 PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,” have suffered,
23 and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate
24 remedy at law.

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