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FILED

JAN 12 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION
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16 JOHN MOORE,

17 Plaintiff,

18 v.

19 HILLMAN COMPANIES, LLC, THE
20 HILLMAN COMPANIES, INC., and DOES 1-
21 150, inclusive,

22 Defendants.

) Case No. CIV 1600120

) **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 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 in key chains with vinyl/PVC
6 components sold by defendants in 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 defendants’ products about the risks of
10 exposure to DEHP present in and on key chains with vinyl/PVC components manufactured,
11 distributed, and offered for sale or use throughout the State of California. Individuals not
12 covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq. who
13 purchase, use or handle defendants’ products are referred to hereinafter as “consumers”.

14 3. Detectable levels of DEHP are found in and on the key chains with vinyl/PVC
15 components that defendants manufacture, distribute, and offer for sale to consumers and other
16 individuals throughout the State 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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on October
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 13. Defendant THE HILLMAN COMPANIES, INC. (“HILLMAN, INC.”) is a
4 person in the course of doing business within the meaning of Health and Safety Code sections
5 25249.6 and 25249.11.

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

10 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
11 person in the course of doing business within the meaning of Health and Safety Code sections
12 25249.6 and 25249.11.

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

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

3 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 25, inclusive.

5 27. 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 28. 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 29. On October 21, 2015, plaintiff served a sixty-day notice of violation, together
14 with the requisite certificate of merit, on HILLMAN, LLC, HILLMAN, INC., and certain public
15 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS
16 containing DEHP, purchasers and users in the State of California were being exposed to DEHP
17 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
18 purchasers and users first having been provided with a “clear and reasonable warning”
19 regarding the harms associated with such exposures, as required by Proposition 65.

20 30. 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.
23 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
24 the future.

25 31. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
26 public enforcement agencies have commenced and diligently prosecuted a cause of action
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1 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
2 subject of plaintiff's notice of violation.

3 32. 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 and other individuals in California are not exempt from the "clear and reasonable"
7 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

8 33. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufactured, imported, distributed, sold, and offered for sale or use in California contained
10 DEHP.

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

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

16 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

18 37. DEFENDANTS intended that exposures to DEHP from the reasonably
19 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
20 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
21 use to consumers and other individuals in California.

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

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

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

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

9 **PRAYER FOR RELIEF**

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

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

14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California without first providing a “clear and
17 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
18 25601 *et seq.*, regarding the harms associated with exposures to DEHP;


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

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

24 5. That the Court grant such other and further relief as may be just and proper.
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Dated: January 11, 2015

Respectfully Submitted,
THE CHANLER GROUP

By:  _____

Warren M. Klein
Attorneys for Plaintiff
JOHN MOORE

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