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**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 26 2016

CLERK OF THE SUPERIOR COURT
By 
JAMIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.
ADVANCE AUTO PARTS, INC.;
CARQUEST CORPORATION; and DOES
1-150, inclusive,
Defendants.

Case No. **RG16832671**

**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 in the
3 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 electrical tape and vinyl/PVC tool grips sold by
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens about the risk of exposure to DEHP present in vinyl/PVC electrical
9 tapes and vinyl/PVC tool grips manufactured, distributed, and offered for sale or use to
10 consumers throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC electrical tapes and
12 vinyl/PVC tool grips that defendants manufacture, distribute, and offer for sale to consumers
13 throughout the State of California.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
15 Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), "[n]o person in the course of
16 doing business shall knowingly and intentionally expose any individual to a chemical known to
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual . . ." Health & Safety Code § 25249.6.

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

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without
25 health hazard warnings in California, vinyl/PVC electrical tape and vinyl/PVC tool grips that
26 contain DEHP including, but not limited to, the *Carquest 208 PC Electrical Repair Kit (PVC*
27 *Electrical Insulating Tape, Wire Stripper/Cutter)*, WTA208, #13105, UPC #7 27943 59790 8.

1 All such vinyl/PVC electrical tape and vinyl/PVC tool grips containing DEHP are referred to
2 collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in the State of
4 California of the health hazards associated with exposures to DEHP in conjunction with
5 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
6 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
7 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 purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to DEHP. 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 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 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 ADVANCE AUTO PARTS, INC. ("AAP") 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. AAP manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
22 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
23 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendant CARQUEST CORPORATION ("CARQUEST") is a person in the
25 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
26 25249.11.

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1 14. CARQUEST manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or 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, and each of them, research, test, design,
9 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
10 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
11 sale or use in 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, and each of them, distribute, exchange,
16 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
17 retailers for sale or use in the State of California, or each implies by its conduct that it
18 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
19 individuals, businesses, or retailers for sale or use in the State of California.

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

23 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
24 individuals in the State of California.

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

3 22. AAP, CARQUEST, MANUFACTURER DEFENDANTS, DISTRIBUTOR
4 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
5 referred to collectively as the "DEFENDANTS."

6 **VENUE AND JURISDICTION**

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

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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

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

9 29. On May 26, 2016, a 60-Day Notice of Violation (“Notice”) was provided to AAP,
10 CARQUEST, and certain public enforcement agencies stating that, as a result of
11 DEFENDANTS’ sales of the PRODUCTS containing DEHP, purchasers and users in the State
12 of California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
13 PRODUCTS, without the individual purchasers and users first having been provided with a
14 “clear and reasonable warning” regarding the harms associated with such exposures, as required
15 by Proposition 65.

16 30. DEFENDANTS have engaged in the manufacture, distribution, and offering of
17 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
18 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notice.
19 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to
20 occur in the future.

21 31. After receiving the claims asserted in the Notice, the appropriate public
22 enforcement agencies have failed to commence and diligently prosecute a cause of action
23 against DEFENDANTS under Proposition 65.

24 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
25 California by DEFENDANTS contain DEHP, such that they require a “clear and reasonable”
26 warning under Proposition 65.

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1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufactured, distributed, sold, and/or offered for sale or use in California contained DEHP.

3 34. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
4 to DEHP through dermal contact and/or ingestion during 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 California
7 Code of Regulations title 27, section 25602(b).

8 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
9 of the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

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

14 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
15 consumers and other individuals in the State of California who were or who would become
16 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
17 uses of the PRODUCTS.

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

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

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