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Superior Court of California
County of San Francisco

JUN 21 2017

CLERK OF THE COURT
BY: Amaya Jones Deputy Clerk

Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.
BASS PRO, LLC; and DOES 1-150, inclusive,
Defendants.

Case No. **CGC-17-559688**
**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 cooking utensil grips and vinyl/PVC tubing sold by defendants
6 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 6300 *et seq.*, who purchase, use or handle defendants’ products, about the risks of exposure to
10 DEHP present in and on the cooking utensil grips and vinyl/PVC tubing manufactured,
11 purchased, imported, distributed, sold and/or offered for sale or use throughout the State of
12 California by defendants. Individuals not covered by California’s Occupational Safety Health
13 Act, Labor Code § 6300 *et seq.*, who purchase, use or handle defendants’ products, are referred
14 to hereinafter as “consumers.”

15 3. Detectable levels of DEHP are found in and on the cooking utensil grips and
16 vinyl/PVC tubing that defendants manufacture, purchase, import, distribute, sell and/or offer for
17 sale to consumers throughout the State of California.

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

23 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
24 DEHP as a chemical known to cause birth defects (and reproductive harm.) DEHP became
25 subject to the “clear and reasonable warning” requirements of the act one year later on October
26 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
27 25249.10(b).

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

3 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
4 person in the course of doing business, within the meaning of Health and Safety Code §§
5 25249.6 and 25249.11.

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

10 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
11 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
12 25249.11.

13 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
14 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
15 retailers for sale or use in the State of California, or each implies by its conduct that it
16 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
17 individuals, businesses, or retailers for sale or use in the State of California.

18 17. 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 §§ 25249.6 and
20 25249.11.

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

23 19. 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 § 474. Plaintiff is informed and believes, and on that basis alleges, that
26 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
27 herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

3 26. 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 27. On June 14, 2016, Plaintiff served a sixty-day notice of violation, together with
8 the accompanying certificate of merit, on BASS PRO, the California Attorney General’s Office,
9 and the requisite public enforcement agencies, alleging that, as a result of DEFENDANTS’
10 sales of the PRODUCTS, consumers in the State of California are being exposed to DEHP,
11 resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first
12 receiving a “clear and reasonable warning” regarding the harms associated with exposures to
13 DEHP, as required by Proposition 65.

14 28. DEFENDANTS manufacture, purchase, import, distribute, sell, and/or offer the
15 PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and
16 DEFENDANTS’ violations have continued beyond their receipt of plaintiff’s sixty-day notice
17 of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature and,
18 unless enjoined, will continue in the future.

19 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
20 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
21 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of
22 violation.

23 30. The PRODUCTS that DEFENDANTS manufacture, purchase, import, distribute,
24 sell, and/or offer for sale or use in California cause exposures to DEHP, as a result of the
25 reasonably foreseeable use of the PRODUCTS. Such exposures, caused by DEFENDANTS
26 and endured by consumers in California, are not exempt from the “clear and reasonable”
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1 warning requirements of Proposition 65, yet DEFENDANTS provide no clear & reasonable
2 warning.

3 31. DEFENDANTS know or should have known that the PRODUCTS they
4 manufacture, purchase, import, distribute, sell, and/or offer for sale in California contain DEHP.

5 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
6 through dermal contact and/or ingestion, during reasonably foreseeable use.

7 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
8 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
9 of Regulations, § 25602(b).

10 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
11 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

12 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
13 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
14 manufacture, purchase, importation, distribution, sale, and offering of the PRODUCTS for sale
15 or use to consumers in California.

16 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 consumers in California who have been, or who will be, exposed to DEHP through dermal
18 contact and/or ingestion resulting from their use of the PRODUCTS.

19 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
20 directly by California voters, consumers exposed to DEHP through dermal contact and/or
21 ingestion, as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear
22 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
23 for which they have no plain, speedy, or adequate remedy at law.

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