

EX-100

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

JOHN MOORE,

Plaintiff,

v.

L.D.F. INDUSTRIES, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. **CGC-16-555157**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

FILED

Superior Court of California
County of San Francisco

NOV 02 2016

CLERK OF THE COURT

BY: Arline Ramon
Deputy Clerk

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1 to, the "Comfi-Wear 3-Piece P.V.C. Heavy Duty Rainsuit with Super Strong Polyester Lining,
2 Style RW-300, #14-384, UPC #7 43153 14384 1, #7 93770 22314 3. All such vinyl/PVC rain
3 suits containing DEHP are referred to collectively hereinafter as "PRODUCTS."

4 7. Defendants' failure to warn consumers in the State of California of the health
5 hazards associated with exposures to DEHP in conjunction with defendants' sales of the
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
8 § 25249.7(a) & (b)(1).

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

13 9. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil
14 penalties against defendants for their violations of Proposition 65.

15 PARTIES

16 10. Plaintiff JOHN MOORE, is a citizen of the State of California who is dedicated to
17 protecting the health of California citizens through the elimination or reduction of toxic
18 exposures from consumer products; and brings this action in the public interest pursuant to
19 Health and Safety Code section 25249.7(d).

20 11. Defendant L.D.F. Industries, Inc. ("L.D.F.") is a person in the course of doing
21 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

22 12. L.D.F. manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
26 person in the course of doing business within the meaning of Health and Safety Code sections
27 25249.6 and 25249.11.

28 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,

1 assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design,
2 assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in
3 California.

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

7 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
8 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
9 retailers for sale or use in the State of California, or imply by their conduct that they distribute,
10 exchange, transfer, process, and transport one or more of the PRODUCTS to individuals,
11 businesses, or retailers for sale or use in the State of California.

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

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

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

22 20. L.D.F., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
23 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively
24 as the "DEFENDANTS."

25 VENUE AND JURISDICTION

26 21. Venue is proper in the Superior Court for the County of San Francisco pursuant to
27 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
28 competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because

1 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
2 and/or because DEFENDANTS conducted, and continue to conduct business in San Francisco
3 with respect to the PRODUCTS.

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

8 23. The California Superior Court has jurisdiction over DEFENDANTS based on
9 Plaintiff's information and good faith belief that DEFENDANTS are each a person, firm,
10 corporation or association that is a citizen of the State of California, has sufficient minimum
11 contacts in the State of California, and/or otherwise purposefully avails itself of the California
12 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
13 California courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

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

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

22 26. Proposition 65 states, "[n]o person in the course of doing business shall
23 knowingly and intentionally expose any individual to a chemical known to the state to cause
24 cancer or reproductive toxicity without first giving clear and reasonable warning to such
25 individual" Health & Safety Code § 25249.6.

26 27. On August 8, 2016, Plaintiff served a sixty-day notice of violation, together with
27 the accompanying certificate of merit, on L.D.F., the California Attorney General's Office, and
28 the requisite public enforcement agencies alleging that, as a result of DEFENDANTS' sales of

1 the PRODUCTS, consumers in the State of California are being exposed to DEHP resulting
2 from their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving
3 a "clear and reasonable warning" regarding the harms associated with exposures to DEHP, as
4 required by Proposition 65.

5 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
6 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
7 violations have continued beyond their receipt of Plaintiff's sixty-day notice of violation. As
8 such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined
9 will continue in the future.

10 29. After receiving Plaintiff's sixty-day notice of violation, no public enforcement
11 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
12 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of
13 violation.

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

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

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

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

26 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
27 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.
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35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in California.

36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers in California who have been, or who will be, exposed to DEHP 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 DEHP through dermal contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard 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 section 25249.7(b), as a consequence of the above-described acts, DEFENDANTS, and each of them, 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 section 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 section 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 section 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" in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

5 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and

6 5. That the Court grant such other and further relief as may be just and proper.
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8 Dated: November 1, 2016

Respectfully submitted,
THE CHANLER GROUP

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10 By: 

Christopher F. Tuttle
Attorneys for Plaintiff
JOHN MOORE
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