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FILED
San Francisco County Superior Court

DEC 04 2017
CLERK OF THE COURT
BY:  Deputy Clerk

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

JOHN MOORE,
Plaintiff,
v.
JS PRODUCTS, INC.; and DOES 1 – 15,
inclusive,
Defendants.

Case No. **CGC - 17 - 562821**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.5)

1 **NATURE OF THE ACTION**

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 of the health hazards caused by exposures to di(2-ethylhexyl) phthalate ("DEHP"), a
5 toxic chemical found in and on the vinyl/PVC components of portfolios sold by defendants in
6 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 the vinyl/PVC components of portfolios 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 vinyl/PVC components of
15 portfolios that defendants manufacture, distribute, and offer for sale to consumers throughout
16 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 listed DEHP as a
23 chemical known to cause birth defects or other reproductive harm. DEHP became subject to the
24 "clear and reasonable warning" requirements of the act one year later on October 24, 2004. Cal.
25 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
27 hazard warnings in California, portfolios with vinyl/PVC components that contain DEHP
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1 including, but not limited to, *Kobalt Contractor's Portfolio with Tablet Storage, Item #0549809,*
2 *Model #87552, LW013001-022014, UPC #0 99198 87552 1.* All such portfolios with
3 vinyl/PVC components containing DEHP are referred to collectively hereinafter as
4 "PRODUCTS."

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

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

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

16 **PARTIES**

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

21 11. Defendant JS PRODUCTS, INC. ("JS PRODUCTS") is a person in the course of
22 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

27 13. Defendants DOES 1-5 ("MANUFACTURER DEFENDANTS") are each a
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1 person in the course of doing business within the meaning of Health and Safety Code sections
2 25249.6 and 25249.11.

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

7 15. Defendants DOES 6-10 ("DISTRIBUTOR DEFENDANTS") are each a person in
8 the course of doing business within the meaning of Health and Safety Code sections 25249.6
9 and 25249.11.

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

15 17. Defendants DOES 11-15 ("RETAILER DEFENDANTS") are each a person in
16 the course of doing business within the meaning of Health and Safety Code sections 25249.6
17 and 25249.11.

18 18. Each of the RETAILER DEFENDANTS offers the PRODUCTS for sale to
19 consumers and other individuals in California.

20 19. At this time, the true names of defendants DOES 1 through 15, inclusive, are
21 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
22 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
23 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
24 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

25 20. JS PRODUCTS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
27 referred to collectively as the "DEFENDANTS."
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . .” Health & Safety Code § 25249.6.

3 27. On September 12, 2017, plaintiff served a sixty-day notice of violation, together
4 with the required certificate of merit, on JS PRODUCTS, the California Attorney General, and
5 the all other requisite public enforcement agencies alleging that, as a result of DEFENDANTS’
6 sales of the PRODUCTS, consumers in the State of California are being exposed to DEHP
7 resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first
8 receiving a “clear and reasonable warning” regarding the harms associated with exposures to
9 DEHP, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
13 such, DEFENDANTS’ violations are ongoing and continuous and, unless enjoined, will
14 continue in the future.

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

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale California cause exposures to DEHP as a result of the reasonably foreseeable use
21 of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
22 California are not exempt from the “clear and reasonable” warning requirements of Proposition
23 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations as alleged herein have
24 been going on since at least September 12, 2014.

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

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

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

6 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes individuals to DEHP through dermal contact.

8 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
9 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
10 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale to
11 consumers and other individuals in California.

12 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
13 consumers and other individuals in California who have been, or who will be, exposed to DEHP
14 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

23 39. As a consequence of the above-described acts, Health and Safety Code
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.

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1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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

16 5. That the Court grant such other and further relief as may be just and proper.

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18 Dated: December 1, 2017

19 Respectfully submitted,
20 THE CHANLER GROUP

21 By. 

22 Brian Johnson
23 Attorneys for Plaintiff
24 JOHN MOORE