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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
BY J. CAO-NGUYEN DEPUTY

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JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,
Plaintiff,
v.
VALLEY INDUSTRIES, LLP; and DOBS 1 –
150, inclusive,
Defendants.

Case No. 18 CV 321393

**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
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 hose grips sold by Defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle Defendants’ products, about the risks of
9 exposure to DEHP present in and on the vinyl/PVC hose grips manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle Defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of DEHP are found in and on the vinyl/PVC hose grips that
14 Defendants manufacture, distribute, and offer for sale to consumers throughout the State of
15 California.

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

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

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
27 hazard warnings in California, vinyl/PVC hose grips that contain DEHP including, but not
28 limited to, *High Pressure Hose, Part #PK-85256126, UPC #8 16403 00009 3*. All such

1 vinyl/PVC hose grips containing DEHP are referred to collectively hereinafter as
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health
4 hazards associated with exposures to DEHP in conjunction with Defendants’ sales of the
5 PRODUCTS are violations of Proposition 65, and subject Defendants, and each of them, to
6 enjoyment of such conduct as well as civil penalties for each violation. Health & Safety Code
7 § 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 consumers of the PRODUCTS
10 with the required warning regarding the health hazards associated with exposures to DEHP.
11 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 VALLEY INDUSTRIES, LLP (“VALLEY INDUSTRIES”) is a
20 person in the course of doing business within the meaning of Health and Safety Code sections
21 25249.6 and 25249.11.

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

26 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
27 person in the course of doing business within the meaning of Health and Safety Code sections
28 25249.6 and 25249.11.

1 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
2 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
3 and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara
4 with respect to the PRODUCTS.

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

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

15 **FIRST CAUSE OF ACTION**

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

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

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

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

27 27. On September 28, 2017, Plaintiff served a sixty-day notice of violation, together
28 with the accompanying certificate of merit, on VALLEY INDUSTRIES, the California

1 Attorney General's Office, and the requisite public enforcement agencies alleging that, as a
2 result of DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are
3 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,
4 without the consumers first receiving a "clear and reasonable warning" regarding the harms
5 associated with exposures to DEHP, as required by Proposition 65.

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

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

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

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

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

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

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

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

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

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

Dated: January 3, 2018

Respectfully submitted,
THE CHANLER GROUP

By: 

Josh Voorhees
Attorneys for Plaintiff
JOHN MOORE