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FILED

APR 27 2018

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

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

JOHN MOORE,

Plaintiff,

v.

GENUINE PARTS COMPANY;
BALKAMP INC.; and DOES 1 – 150,
inclusive,

Defendant.

Case No. civ 1801416
**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 informed
4 of the health hazards caused by exposures to lead, a toxic chemical found in and on the tool pouches
5 sold by defendant in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn
7 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 et seq.,
8 who purchase, use or handle defendant’s products, about the risks of exposure to lead present in and
9 on the tool pouches, manufactured, imported, distributed, sold and offered for sale or use
10 throughout the State of California. Individuals not covered by California’s Occupational Safety
11 Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendant’s products, are
12 referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found in and on the tool pouches, that defendant
14 manufactures, imports, distributes, sells, and offers for sale to consumers in the State of California.

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

20 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed lead
21 as a chemical known to cause birth defects (and other reproductive harm). Lead became subject to
22 the warning requirement one year later and was therefore subject to the “clear and reasonable
23 warning” requirements of Proposition 65, beginning on February 27, 1988. Cal. Code Regs. tit. 27,
24 § 27001 (c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendant manufactures, distributes, imports, sells, and offers for sale without health
26 hazard warnings in California, tool pouches including, but not limited to, *Napa Service Tools*
27 *Professional 1500 Series 4 Piece hook and Pick Set, 3121, UPC #6 64766 42126 6*. All such tool
28 pouches containing lead are referred to collectively hereinafter as “PRODUCTS.”

1 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person in
2 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

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

8 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
9 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
10 25249.11.

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

16 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
17 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
18 25249.11.

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

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

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1 reproductive toxicity without first giving clear and reasonable warning to such individual”
2 Health & Safety Code § 25249.6.

3 29. On February 14, 2018, Plaintiff served a sixty-day notice of violation, together with
4 the accompanying certificate of merit, on GENUINE PARTS, BALKAMP, the California Attorney
5 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
6 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being exposed
7 to lead resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers
8 first receiving a “clear and reasonable warning” regarding the harms associated with exposures to
9 lead as required by Proposition 65.

10 30. DEFENDANTS manufactures, imports, distributes, sells, and offers the PRODUCTS
11 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations
12 have continued beyond its receipt of Plaintiff’s sixty-day notice of violation. As such,
13 DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined, will
14 continue in the future.

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

18 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
19 for sale or use in California cause exposures to lead as a result of the reasonably foreseeable use of
20 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
21 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65,
22 yet DEFENDANTS provided no clear & reasonable warning.

23 33. DEFENDANTS knew or should have known that the PRODUCTS it manufactures,
24 imports, distributes, sells, and offers for sale in California contain lead.

25 34. Lead is present in or on the PRODUCTS in such a way as to expose consumers
26 through dermal contact and/or ingestion during reasonably foreseeable use.

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1 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
2 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
3 for sale or use in California without first providing a “clear and reasonable warning” in accordance
4 with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms
5 associated with exposures to lead;

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

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

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

12 Dated: April 25, 2018

Respectfully submitted,

THE CHANLER GROUP

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16 By: 

Christopher Tuttle
Attorneys for Plaintiff
JOHN MOORE