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12 JOHN MOORE

FILED

MAR - 4 2019

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

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF MARIN

15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 GENUINE PARTS COMPANY;
20 BALKAMP INC.; and ULLMAN
21 DEVICES CORPORATION,

22 Defendants.

Case No. CIV1801416

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

1 NATURE OF THE ACTION

2 1. This First Amended Complaint (Complaint) is a representative action brought by
3 Plaintiff John Moore in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to lead, a toxic
5 chemical found in and on the tool pouches 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 lead present in and on the tool pouches, that are manufactured, imported,
10 distributed, sold and/or offered for sale or use throughout the State of California. Individuals
11 not covered by California’s Occupational Safety Health Act, Labor Code section 6300 *et seq.*,
12 who purchase, use or handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found in and on the tool pouches, that defendants
14 manufacture, import distribute, and offer for sale to consumers and other individuals throughout
15 the State of 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 February 27, 1987, California identified and listed
22 lead as a chemical known to cause birth defects (and other reproductive harm). Lead became
23 subject to the warning requirement one year later and was therefore subject to the “clear and
24 reasonable warning” requirements of Proposition 65, beginning on February 27, 1988. 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 tool pouches in California, including, but not limited to, *Napa Service Tools*
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1 Professional 1500 Series 4 Piece hook and Pick Set, 3121, UPC #6 64766 42126 6, which are
2 sold and/or offer for sale in California. All such tool pouches containing lead are referred to
3 collectively hereinafter as "PRODUCTS."

4 7. Defendants' failure to warn consumers and other individuals in the State of
5 California of the health hazards associated with exposures to lead in conjunction with
6 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
7 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
8 Health & Safety Code § 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 lead. 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 he brings this action in the public interest pursuant to
19 Health and Safety Code section 25249.7(d).

20 11. Defendant GENUINE PARTS COMPANY (GENUINE PARTS) is a person in
21 the course of doing business within the meaning of Health and Safety Code sections 25249.6
22 and 25249.11.

23 12. GENUINE PARTS 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.

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1 contacts in the State of California, and/or otherwise purposefully avails itself of the California
2 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 21. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 20, inclusive.

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

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

16 24. On February 14, 2018, plaintiff served a sixty-day notice of violation, together
17 with the accompanying certificate of merit, on GENUINE PARTS, BALKAMP, the California
18 Attorney General's Office, and the requisite public enforcement agencies alleging that, as a
19 result of DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are
20 being exposed to lead resulting from their reasonably foreseeable use of the PRODUCTS,
21 without the consumers first receiving a "clear and reasonable warning" regarding the harms
22 associated with exposures to lead as required by Proposition 65.

23 25. On October 24, 2018, plaintiff served a supplemental sixty-day notice of
24 violation, together with the accompanying certificate of merit, on DEFENDANTS, the
25 California Attorney General's Office, and the requisite public enforcement agencies alleging
26 that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers in the State of
27 California are being exposed to lead resulting from their reasonably foreseeable use of the
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1 PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding
2 the harms associated with exposures to lead, as required by Proposition 65.

3 26. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
4 for sale or use in California in violation of Health and Safety Code section 25249.6, and
5 DEFENDANTS’ violations have continued beyond their receipt of plaintiff’s sixty-day notices
6 of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature and,
7 unless enjoined, will continue in the future.

8 27. After receiving plaintiff’s sixty-day notices of violation, no public enforcement
9 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
10 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notices
11 of violation.

12 28. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
13 offer for sale or use in California cause exposures to lead as a result of the reasonably
14 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
15 consumers and other individuals in California are not exempt from the “clear and reasonable”
16 warning requirements of Proposition 65, yet DEFENDANTS provided no clear and reasonable
17 warning.

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

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

22 31. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
23 continues to cause, consumer product exposures to lead, as defined by title 27 of the California
24 Code of Regulations, section 25600.1(e).

25 32. DEFENDANTS know that the normal and reasonably foreseeable use of the
26 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

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1 33. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use
2 of the PRODUCTS will occur by their deliberate, non-accidental participation in the
3 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
4 consumers in California.

5 34. DEFENDANTS failed to provide a “clear and reasonable warning” to those
6 consumers in California who have been, or who will be, exposed to lead through dermal contact
7 and/or ingestion resulting from their use of the PRODUCTS.

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

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

16 37. As a consequence of the above-described acts, Health and Safety Code
17 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
18 DEFENDANTS.

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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 25600 *et seq.*, regarding the harms associated with exposures to lead;

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 25600 *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 25, 2019

Respectfully submitted,
THE CHANLER GROUP



By: _____
Laralei S. Paras
Attorneys for plaintiff
JOHN MOORE