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FILED

MAY 18 2018

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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION

12
13 JOHN MOORE,
14 Plaintiff,
15 v.
16 MADE MODERN, LLC; TARGET
CORPORATION; and DOES 1-150, inclusive,
17 Defendants.

Case No. **CIV 1801689**
**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 tool grips sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens and other individuals about the risks of exposure to DEHP present in
8 and on tool grips manufactured, distributed, and offered for sale or use to consumers and other
9 individuals throughout the State of California.

10 3. Detectable levels of DEHP are found in and on the tool grips that defendants
11 manufacture, distribute, and offer for sale to consumers and other individuals throughout the
12 State of California.

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

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

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 13. Defendant TARGET CORPORATION (“TARGET”) is a person in the course of
4 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

5 14. TARGET manufactures, imports, distributes, sells, and/or offers the PRODUCTS
6 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
7 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

8 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
14 California.

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

18 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
19 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
20 in the State of California.

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

24 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

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

4 22. MADE MODERN, TARGET, MANUFACTURER DEFENDANTS,
5 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
6 collectively be referred to as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in Marin County Superior Court, pursuant to Code of Civil
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
10 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
11 wrongful conduct occurred, and continue to occur, in this county, and/or because
12 DEFENDANTS conducted, and continue to conduct, business in Marin County with respect to
13 the PRODUCTS.

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

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

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1 **FIRST CAUSE OF ACTION**

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

3 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 25, inclusive.

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

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

13 29. On February 14, 2018, plaintiff served a 60-day Notice of Violation (the
14 “Notice”), together with the requisite certificate of merit, on MADE MODERN, TARGET and
15 certain public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
16 PRODUCTS containing DEHP, purchasers and users in the State of California were being
17 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
18 the individual purchasers and users first having been provided with a “clear and reasonable
19 warning” regarding the harms associated with such exposures, as required by Proposition 65.

20 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of plaintiff’s Notice. DEFENDANTS’ violations
23 are ongoing and continuous in nature, and, as such, will continue in the future.

24 31. After receiving plaintiff’s Notice, none of the appropriate public enforcement
25 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS
26 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s Notice.

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1 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
2 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
3 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
4 consumers and other individuals in California are not exempt from the “clear and reasonable”
5 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

6 33. DEFENDANTS knew or should have known that the PRODUCTS they
7 manufactured, imported, distributed, sold, and offered for sale or use in California contained
8 DEHP.

9 34. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
10 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

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

14 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
15 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

16 37. DEFENDANTS intended that exposures to DEHP from the reasonably
17 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
18 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
19 use to consumers and other individuals in California.

20 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and other individuals in California who were or who would become exposed to
22 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

23 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
24 directly by California voters, individuals exposed to DEHP through dermal contact and/or
25 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear
26 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
27 for which they have no plain, speedy, or adequate remedy at law.

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

41. 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;

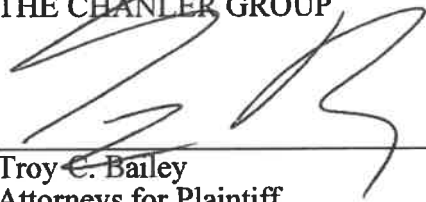
3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a "clear and reasonable warning" as defined by California Code of Regulations title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

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- 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: May 18, 2018

Respectfully Submitted,
THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiff
JOHN MOORE