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FILED

JUL 27 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 LAURENCE VINOCUR; and JOHN MOORE,
13
14 Plaintiffs,

15 v.

16 CSS INDUSTRIES, INC.; C.R. GIBSON, LLC;
17 MADE MODERN, LLC; TARGET
18 CORPORATION; and DOES 1-150, inclusive,
19 Defendants.

Case No. CIV 1802647

**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 plaintiffs LAURENCE
3 VINOCUR and JOHN MOORE in the public interest of the citizens of the State of California to
4 enforce the People’s right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl) phthalate (“DEHP”), a toxic chemical found in and on vinyl/PVC cosmetic cases
6 and tool grips sold by defendants in California.

7 2. By this Complaint, plaintiffs seek 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 vinyl/PVC cosmetic cases and tool grips that are
11 manufactured, distributed, and offered for sale or use throughout the State of California.
12 Individuals not covered by California’s Occupational Safety Health Act, Labor Code section
13 6300 et seq., who purchase, use or handle defendants’ products, are referred to hereinafter as
14 “consumers.”

15 3. Detectable levels of DEHP are found in and on vinyl/PVC cosmetic cases and
16 tool grips that defendants manufacture, distribute, and offer for sale to consumers throughout
17 the State of California.

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

23 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
24 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
25 subject to the “clear and reasonable warning” requirements of the act one year later on October
26 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and
27 25249.10(b).
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1 12. Defendants CSS, C.R. GIBSON, MADE MODERN, and TARGET are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

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

7 14. C.R. GIBSON manufactures, imports, distributes, sells, and/or offers the
8 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
9 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
10 State of California.

11 15. MADE MODERN manufactures, imports, distributes, sells, and/or offers the
12 TOOL GRIPS for sale or use in the State of California, or implies by its conduct that it
13 manufactures, imports, distributes, sells, and/or offers the TOOL GRIPS for sale or use in the
14 State of California.

15 16. With respect to MADE MODERN, "PRODUCTS" are limited to the TOOL
16 GRIPS.

17 17. TARGET manufactures, imports, distributes, sells, and/or offers the TOOL GRIPS
18 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
19 distributes, sells, and/or offers the TOOL GRIPS for sale or use in the State of California.

20 18. With respect to TARGET, "PRODUCTS" are limited to the TOOL GRIPS.

21 19. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
22 person in the course of doing business within the meaning of Health and Safety Code sections
23 25249.6 and 25249.11.

24 20. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
25 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
26 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
27 sale or use in California.
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1 DEFENDANTS conducted, and continue to conduct, business in Marin with respect to the
2 PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

15 30. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
16 Paragraphs 1 through 29, inclusive.

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

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

25 33. Each plaintiff’s allegations as to each defendant are limited to their respective
26 sixty-day notices, as specified in paragraphs 34 through 35.

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1 34. On April 9, 2018, VINOCUR served a sixty-day notice of violation, together with
2 the accompanying certificate of merit, on CSS, C.R. GIBSON, the California Attorney
3 General's Office, and the requisite public enforcement agencies alleging that, as a result of
4 CSS' AND C.R. GIBSON'S sales of the COSMETIC CASES, consumers in the State of
5 California are being exposed to DEHP resulting from their reasonably foreseeable use of the
6 COSMETIC CASES, without the consumers first receiving a "clear and reasonable warning"
7 regarding the harms associated with exposures to DEHP, as required by Proposition 65.

8 35. On February 14, 2018, MOORE served a sixty-day notice of violation, together
9 with the accompanying certificate of merit, on MADE MODERN, TARGET, the California
10 Attorney General's Office, and the requisite public enforcement agencies alleging that, as a
11 result of DEFENDANTS' sales of the TOOL GRIPS, consumers in the State of California are
12 being exposed to DEHP resulting from their reasonably foreseeable use of the TOOL GRIPS,
13 without the consumers first receiving a "clear and reasonable warning" regarding the harms
14 associated with exposures to DEHP, as required by Proposition 65.

15 36. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
16 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
17 violations have continued beyond their receipt of plaintiffs' sixty-day notices of violation. As
18 such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined
19 will continue in the future.

20 37. After receiving Plaintiffs' sixty-day notices of violation, no public enforcement
21 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
22 under Proposition 65 to enforce the alleged violations that are the subject of plaintiffs' notices
23 of violation.

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

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

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

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

10 42. DEFENDANTS know that the normal and reasonably foreseeable use of the
11 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

12 43. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
13 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
14 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
15 consumers in California.

16 44. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 consumers in California who have been, or who will be, exposed to DEHP through dermal
18 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

1 47. As a consequence of the above-described acts, Health and Safety Code
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiffs prays for judgment against DEFENDANTS as follows:

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

9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
11 offering the PRODUCTS for sale or use in California without first providing a “clear and
12 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
13 25601 et seq., regarding the harms associated with exposures to DEHP;

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

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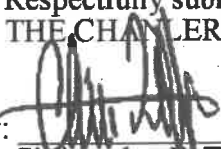
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- 4. That the Court grant plaintiffs their reasonable attorneys' fees and costs of suit;
- and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: July 27, 2018

Respectfully submitted,
THE CHANLER GROUP

By: 

Christopher F. Tuttle
Attorneys for Plaintiffs
LAURENCE VINOCUR; and
JOHN MOORE