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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 WINCO FOODS, LLC; WINCO HOLDINGS,
20 INC.; and DOES 1-150, inclusive,

21 Defendants.

Case No. **CGC-18-568852**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

**ENDORSED
FILED**
San Francisco County Superior Court
AUG 13 2018
CLERK OF THE COURT
BY: NEYL WEBB
Deputy Clerk

BY FAX
NATIONWIDE LEGAL LLC
859 HARRISON ST. SF, CA 94108
415-351-0400

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 water carriers with vinyl/PVC handles 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 water carriers with vinyl/PVC handles manufactured, distributed, and offered for sale or
9 use to consumers and other individuals throughout the State of California.

10 3. Detectable levels of DEHP are found in and on the water carriers with vinyl/PVC
11 handles that defendants manufacture, distribute, and offer for sale to consumers and other
12 individuals throughout the 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).

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without
24 health hazard warnings in California, water carriers with vinyl/PVC handles containing DEHP
25 including, but not limited to, the *Water Carrier, Water Jug, ITEM NO:29289, UPC #8 10789*
26 *02356 1*, all such water carriers with vinyl/PVC handles containing DEHP that are
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1 manufactured, distributed, sold and/or offered for sale by defendants in the State of California
2 are referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in the State of
4 California of the health hazards associated with exposures to DEHP in conjunction with
5 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
6 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
7 Health & Safety Code § 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 purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to DEHP. 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 WINCO FOODS, LLC (WINCO FOODS) is a person in the course of
20 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

25 13. Defendant WINCO HOLDINGS, INC. (WINCO HOLDINGS) is a person in the
26 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
27 25249.11.

1 14. WINCO HOLDINGS manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

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

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

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

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

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

21 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
22 State of California.

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 22. WINCO FOODS, WINCO HOLDINGS, MANUFACTURER DEFENDANTS,
2 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
3 collectively be referred to as "DEFENDANTS."

4 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

7 29. On April 9, 2018, plaintiff served a 60-day Notice of Violation (the “Notice”),
8 together with the requisite certificate of merit, on WINCO FOODS, WINCO HOLDINGS and
9 certain public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
10 PRODUCTS containing DEHP, purchasers and users in the State of California were being
11 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
12 the individual purchasers and users first having been provided with a “clear and reasonable
13 warning” regarding the harms associated with such exposures, as required by Proposition 65.

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

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

21 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
22 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
23 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
24 consumers and other individuals in California are not exempt from the “clear and reasonable”
25 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.
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1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufactured, imported, distributed, sold, and offered for sale or use in California contained
3 DEHP.

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

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

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

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

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

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

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

1 41. 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, plaintiff 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.*;

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

19 5. That the Court grant such other and further relief as may be just and proper.
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21 Dated: August 13, 2018

Respectfully Submitted,
THE CHANLER GROUP

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24 By:  _____

Clifford A. Chanler
Attorneys for Plaintiff
JOHN MOORE

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