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ALAMEDA COUNTY
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Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
Warren M. Klein, State Bar No. 3039058
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

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

RG15781319

JOHN MOORE,

Plaintiff,

v.

TECHTRONIC INDUSTRIES NORTH
AMERICA, INC.; MILWAUKEE ELECTRIC
TOOL CORPORATION; ZIEMANN'S
VISION, LLC; and DOES 1-150, inclusive,

Defendant.

) Case No. _____
)
) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
)
) (Health & Safety Code § 25249.5 *et seq.*)
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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 products 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 DEHP present in and on gloves with vinyl/PVC components, and tools with
10 vinyl/PVC grips, manufactured, distributed, and offered for sale or use throughout the State of
11 California. Individuals not covered by California's Occupational Safety Health Act, Labor
12 Code section 6300 et seq. who purchase, use or handle defendants' products are referred to
13 hereinafter as "consumers"..

14 3. Detectable levels of DEHP are found in and on the aforementioned products that
15 defendants manufacture, distribute, and offer for sale to consumers and other individuals
16 throughout the State of California.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
24 subject to the "clear and reasonable warning" requirements of the act one year later on October
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 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 MILWAUKEE ELECTRIC TOOL CORPORATION
4 ("MILWAUKEE") is a person in the course of doing business within the meaning of Health and
5 Safety Code sections 25249.6 and 25249.11.

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

10 15. Defendant ZIEMANN'S VISION, LLC ("ZIEMANN'S") is a person in the
11 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
12 25249.11.

13 16. ZIEMANN'S manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
15 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
16 State of California.

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

20 18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
21 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
22 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
23 California.

24 19. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
25 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
26 and 25249.11.

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1 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation.
2 DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will continue in
3 the future.

4 33. After receiving plaintiff's sixty-day notice of violation, none of the appropriate
5 public enforcement agencies have commenced and diligently prosecuted a cause of action
6 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
7 subject of plaintiff's notices of violation.

8 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
9 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
10 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
11 consumers and other individuals in California are not exempt from the "clear and reasonable"
12 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

13 35. DEFENDANTS knew or should have known that the PRODUCTS they
14 manufactured, imported, distributed, sold, and offered for sale or use in California contained
15 DEHP.

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

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

21 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
22 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

23 39. DEFENDANTS intended that exposures to DEHP from the reasonably
24 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
25 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
26 use to consumers and other individuals in California.

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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.;

- 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: August 6, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 

Warren M. Klein
Attorneys for Plaintiff
JOHN MOORE