



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Jul-23-2010 9:56 am

Case Number: CGC-10-501870

Filing Date: Jul-23-2010 9:51

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COMPLAINT

JOHN MOORE VS. OFFICEMAX INCORPORATED et al

001C02918966

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Officemax Incorporated and DOES 1-600

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

John Moore

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
Civic Center Courthouse
400 McAllister Street San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): **02C-10-501870**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gregory Sheffer, The Chanler Group, 38 Miller Ave., #102, Mill Valley, CA 94941, 415-459-1411

DATE: **JUL 23 2010** CLERK OF THE COURT **SECRETARIO**, Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).




- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Gregory M. Sheffer, S.B. No. 173124
The Chanler Group
38 Miller Avenue, #102
Mill Valley, CA 94941
TELEPHONE NO.: 415-459-1411 FAX NO.: 415-459-1911
ATTORNEY FOR (Name): Plaintiff John Moore

FOR COURT USE ONLY
**SUMMONS ISSUED
FILED**
San Francisco County Superior Court

JUL 23 2010

CLERK OF THE COURT
BY:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

CASE NAME:
John Moore v. Officemax Inc, et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **CC-10-501870**
JUDGE:
DEPT:

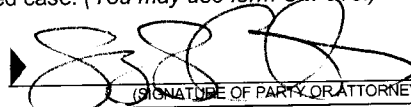
Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input checked="" type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): one
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 22, 2010
Gregory M. Sheffer, Esq.
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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Gregory M. Sheffer, State Bar No. 173124
THE CHANLER GROUP
38 Miller Avenue, #102
Mill Valley, CA 94941
Telephone: (415) 459-1411
Facsimile: (415) 459-1911

Attorneys for Plaintiff
JOHN MOORE

ASE MANAGEMENT CONFERENCE SF

DEC 23 2010
9:00AM
DEPARTMENT 212

SUMMONS ISSUED
FILED
San Francisco County Superior Court

JUL 23 2010

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

OFFICEMAX INCORPORATED and DOES
1-600, inclusive,

Defendant.

Case No. **CCC-10-501870**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

NATURE OF THE ACTION

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1. This Complaint is a representative action brought by Plaintiff John Moore, in the public interest of the citizens of the State of California, to enforce the People’s right to be informed of the presence of Di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical surprisingly found in certain components of select children’s apparel sold in California.

2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failures to warn California citizens about their exposure to DEHP present in or on certain children-oriented fasteners that Defendants manufacture, distribute and/or offer for sale to consumers throughout the State of California.

3. Elevated levels of DEHP have been identified in and on components of children-oriented fasteners, such as Kritter Krew Jumbo Paperclips, #OM02561, (#0 11491 02561 8) that Defendants manufacture, distribute, and/or offer for sale to consumers and businesses throughout the State of California.

4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (Proposition 65), “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

5. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the warning requirement one year later and was therefore subject to the “clear and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

6. DEHP shall hereinafter be referred to as the “Listed Chemical.”

7. Plaintiff is informed and believes that Defendant Officemax Inc., and DOES 1 through 600, manufacture, distribute, and/or sell children-oriented fasteners containing excessive levels of the Listed Chemical, including, but not limited to Kritter Krew Jumbo Paperclips, #OM02561, (#0 11491 02561 8) containing DEHP

1 8. All such children's apparel as listed above in paragraph 7 shall hereinafter be
2 referred to as the "Products."

3 9. Defendants' failures to warn consumers and/or other individuals in the State of
4 California about their exposure to the Listed Chemical in conjunction with Defendants' sale of
5 the Products is a violation of Proposition 65 and subjects Defendants to enjoinder of such
6 conduct as well as civil penalties for each such violation.

7 10. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary
8 injunctive and permanent injunctive relief to compel Defendants to provide purchasers or users
9 of the Products with the required warning regarding the health hazards of the Listed Chemical.
10 (*Cal. Health & Safety Code § 25249.7(a)*.)

11 11. Plaintiff also seeks civil penalties against Defendants for their violations of
12 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

13 **PARTIES**

14 12. Plaintiff John Moore is a citizen of the State of California who is dedicated to
15 protecting the health of California citizens through the elimination or reduction of toxic
16 exposures from commercial products, and brings this action in the public interest pursuant to
17 California Health & Safety Code § 25249.7.

18 13. Defendant, Officemax Inc. ("Officemax") is a person doing business within the
19 meaning of California Health & Safety Code § 25249.11.

20 14. Defendant Officemax manufactures, distributes, and/or offers the Products for
21 sale or use in the State of California or implies by their conduct that they manufacture, distribute
22 and/or offer the Products for sale or use in the State of California.

23 15. Defendant DOES 1-200 ("Manufacturer Defendants") are each persons doing
24 business within the meaning of California Health & Safety Code § 25249.11.

25 16. Manufacturer Defendants engage in the process of research, testing, designing,
26 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
27 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
28 more of the Products for sale or use in the State of California.

1 17. Defendant DOES 201-400 ("Distributor Defendants") are each persons doing
2 business within the meaning of California Health & Safety Code § 25249.11.

3 18. Distributor Defendants distribute, exchange, transfer, process and/or transport one
4 or more of the Products to individuals, businesses or retailers for sale or use in the State of
5 California.

6 19. Defendant DOES 401-600 ("Retailer Defendants") are each persons doing
7 business within the meaning of California Health & Safety Code § 25249.11.

8 20. Retailer Defendants offer the Products for sale primarily to individuals in the
9 State of California.

10 21. At this time, the true names of Defendant DOES 1 through 600, inclusive, are
11 unknown to plaintiff, who therefore sues said Defendant by their fictitious name pursuant to
12 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
13 each of the fictitiously named Defendants is responsible for the acts and occurrences herein
14 alleged. When ascertained, their true names shall be reflected in an amended complaint.

15 22. Defendant Officemax, Retailer Defendants, Distributor Defendants and
16 Manufacturer Defendants shall hereafter be collectively referred to as "Defendants"

17 **VENUE AND JURISDICTION**

18 23. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
19 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
20 because one or more instances of wrongful conduct occurred, and continues to occur, in the City
21 and County of San Francisco and/or because Defendants conducted, and continue to conduct,
22 business in this County with respect to the Products.

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

27 25. The California Superior Court has jurisdiction over Defendants based on
28 Plaintiff's information and good faith belief that each Defendant is a person, firm, corporation or

1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 Defendants' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65 – Against All Defendants)**

7 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 28, inclusive.

9 27. The citizens of the State of California have expressly stated in the Safe Drinking
10 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
11 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
12 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

13 28. Proposition 65 states, “No person in the course of doing business shall knowingly
14 and intentionally expose any individual to a chemical known to the state to cause cancer or
15 reproductive toxicity without first giving clear and reasonable warning to such individual....”
16 (*Id.*)

17 29. On December 15, 2009, a sixty-day notice of violation, together with the requisite
18 certificate of merit, was provided to Officemax and various public enforcement agencies stating
19 that as a result of Defendants' sales of the products listed above in paragraph 7, purchasers and
20 users in the State of California were being exposed to the Listed Chemical resulting from the
21 reasonably foreseeable uses of the Products, without the individual purchasers and users first
22 having been provided with a “clear and reasonable warning” regarding such toxic exposures; and

23 30. Defendants have engaged in the manufacture, distribution and/or offering of the
24 Products for sale or use in violation of California Health & Safety Code § 25249.6 and
25 Defendants' manufacture, distribution and/or offering of the Products for sale or use in violation
26 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendants'
27 receipt of Plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such
28 violations will continue to occur into the future.

1 31. After receipt of the claims asserted in the sixty-day notices of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against Defendants under Proposition 65.

4 32. The Products manufactured, distributed, and/or offered for sale or use in
5 California by Defendants contained the Listed Chemical above the allowable state limits.

6 33. Defendants knew or should have known that the Products manufactured,
7 distributed, and/or offered for sale or use by Defendants in California contained the Listed
8 Chemical.

9 34. The Listed Chemical was present in or on the Products in such a way as to expose
10 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably
11 foreseeable use of the Products.

12 35. The normal and reasonably foreseeable use of the Products has caused and
13 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
14 27 CCR § 25602(b).

15 36. Defendants had knowledge that the normal and reasonably foreseeable use of the
16 Products would expose individuals to the Listed Chemical through dermal contact and/or
17 ingestion.

18 37. Defendants, and each of them, intended that such exposures to the Listed
19 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,
20 non-accidental participation in the manufacture, distribution and/or offer for sale or use of
21 Products to individuals in the State of California.

22 38. Defendants failed to provide a “clear and reasonable warning” to those consumers
23 and/or other individuals in the State of California who were or who could become exposed to the
24 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use
25 of the Products.

26 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
27 directly by California voters, individuals exposed to the Listed Chemical through dermal contact
28 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by

1 Defendants without a “clear and reasonable warning,” have suffered, and continue to suffer,
2 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

3 40. As a consequence of the above-described acts, Defendants, and each of them, are
4 liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
5 Health & Safety Code § 25249.7(b).

6 41. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

8 42. Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as
9 set forth hereinafter.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for judgment against Defendants as follows:

12 1. That the Court assess civil penalties against Defendants, and each of them, in the
13 amount of \$2,500 per day for each violation alleged herein (H&S Code § 25249.7(b));

14 2. That the Court preliminarily and permanently enjoin Defendants, and each of
15 them, from manufacturing, distributing or offering the Products for sale or use in California,
16 without providing “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the
17 harms associated with exposures to the Listed Chemical (H&S Code § 25249.7(a));

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

19 4. That the Court grants such other and further relief as may be just and proper.

20 Dated: July 22, 2010

21 Respectfully Submitted,

22 THE CHANLER GROUP

23
24 By: 

25 Gregory M. Sheffer
26 Attorneys for Plaintiff
27 JOHN MOORE
28