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2 THE CHANLER GROUP  
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7 Attorneys for Plaintiff  
8 JOHN MOORE

CASE MANAGEMENT CONFERENCE SET

JAN 28 2011 - 9:00 AM

DEPARTMENT 312

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

AUG 27 2010

CLERK OF THE COURT  
BY: ROSALY DELAVEGA  
Deputy Clerk

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

12 JOHN MOORE,

13 Plaintiff,

14 v.

15 BORDERS GROUP, INC. BORDERS, INC. and  
16 DOES 1-600, inclusive,

17 Defendants.

Case No.

CGC-10-503036

COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF

(Cal. Health & Safety Code § 25249.6 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 presence of Di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical surprisingly  
5 found in certain components of select notebooks, spacers and notebooks with vinyl key-  
6 chains/charms sold in California.

7 2. By this Complaint, Plaintiff seeks to remedy Defendants' continuing failures to  
8 warn California citizens about their exposure to DEHP present in or on certain notebook  
9 products that Defendants manufacture, distribute and/or offer for sale to consumers  
10 throughout the State of California.

11 3. Elevated levels of DEHP have been identified in and on notebooks with vinyl  
12 key-chains/charms, including, but not limited to Paperchase Notebooks with character  
13 spacers, that Defendants continue to manufacture, distribute, and/or offer for sale to  
14 consumers and businesses throughout the State of California.

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

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

25 6. DEHP shall hereinafter be referred to as the "Listed Chemical."

26 7. Plaintiff is informed and believes that Defendants Borders Group, Inc. and  
27 Borders, Inc. manufacture or cause to manufacture, distribute, and/or sell notebooks  
28 containing excessive levels of the Listed Chemical in or on attached vinyl key-chains/charms

1 including, but not limited to, Paperchase Notebook Spacers with vinyl charms containing  
2 DEHP (#068146188 (#9 780681 46188)).

3 8. All such notebooks and spacers as listed above in paragraph 7 shall hereinafter  
4 be referred to as the "Products."

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

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

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

15 **PARTIES**

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

20 13. Defendants, Borders Group, Inc. and Borders, Inc., ("Borders") are persons  
21 doing business within the meaning of California Health & Safety Code § 25249.11.

22 14. Defendant Borders manufactures or causes to manufacture, distributes, and/or  
23 offers the Products for sale or use in the State of California or implies by their conduct that  
24 they manufacture, distribute and/or offer the Products for sale or use in the State of  
25 California.

26 15. Borders shall herein be collectively referred to as "Defendants"

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









1 the individual purchasers and users first having been provided with a "clear and reasonable  
2 warning" regarding such toxic exposures; and

3 31. Defendants have engaged in the manufacture, distribution and/or offering of  
4 the Products for sale or use in violation of California Health & Safety Code § 25249.6 and  
5 Defendants' manufacture, distribution and/or offering of the Products for sale or use in  
6 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
7 Defendants' receipt of Plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
8 believes that such violations will continue to occur into the future.

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

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

14 34. Defendants knew or should have known that the Products manufactured,  
15 distributed, and/or offered for sale or use by Defendants in California contained the Listed  
16 Chemical.

17 35. The Listed Chemical was present in or on the Products in such a way as to  
18 expose individuals to the Listed Chemical through dermal contact and/or ingestion during  
19 the reasonably foreseeable use of the Products.

20 36. The normal and reasonably foreseeable use of the Products has caused and  
21 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by  
22 27 CCR § 25602(b).

23 37. Defendants had knowledge that the normal and reasonably foreseeable use of  
24 the Products would expose individuals to the Listed Chemical through dermal contact and/or  
25 ingestion.

26 38. Defendants, and each of them, intended that such exposures to the Listed  
27 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,  
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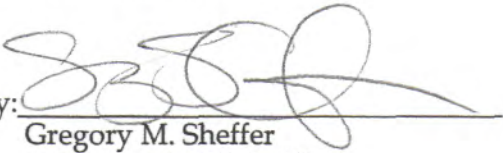
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3. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit;
- and
4. That the Court grants such other and further relief as may be just and proper.

Dated: August 23, 2010

Respectfully Submitted,

THE CHANLER GROUP

By:   
Gregory M. Sheffer  
Attorneys for Plaintiff  
JOHN MOORE