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CASE MANAGEMENT CONFERENCE SET

SEP 3 2010 9⁰⁰ AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 FLAPDOODLES APPAREL, LLC, MAMIYE
15 BROTHERS, INC. and DOES 1-600,
16 inclusive,

17 Defendant.

Case No.

CGC - 10 - 498318

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

ENDORSED
FILED
San Francisco County Superior Court

APR - 2 2010

CLERK OF THE COURT

BY: PARAM NATT
County Clerk

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by Plaintiff John Moore, in the
3 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 children’s apparel sold in California.

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

10 3. Elevated levels of DEHP have been identified in and on components of children’s
11 apparel, such as the zipper pulls of Flapdoodles Side Show Hoodie, #HG17873, (#8 82308
12 60232 8) that Defendants manufacture, distribute, and/or offer for sale to consumers and
13 businesses throughout the State of California.

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

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

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

25 7. Plaintiff is informed and believes that Defendants Flapdoodles Apparel, LLC, and
26 Mamiye Brothers, Inc. manufacture, distribute, and/or sell children’s apparel containing
27 excessive levels of the Listed Chemical in zipper pull components, including, but not limited to
28 Flapdoodles Side Show Hoodie, #HG17873, (#8 82308 60232 8) with Zipper Pulls containing

1 DEHP

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

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

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

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

14 **PARTIES**

15 12. 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 commercial products, and brings this action in the public interest pursuant to
18 California Health & Safety Code § 25249.7.

19 13. Defendant, Flapdoodles Apparel, LLC ("Flapdoodles") is a person doing business
20 within the meaning of California Health & Safety Code § 25249.11.

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

24 15. Defendant, Mamiye Brothers, Inc. ("Mamiye") is a person doing business within
25 the meaning of California Health & Safety Code § 25249.11.

26 16. Defendant Mamiye manufactures, distributes, and/or offers the Products for sale
27 or use in the State of California or implies by their conduct that they manufacture, distribute
28 and/or offer the Products for sale or use in the State of California.

1 17. Flapdoodles and Mamiye shall herein be collectively referred to as “Defendants”

2 18. Defendant DOES 1-200 (“Manufacturer Defendants”) are each persons doing
3 business within the meaning of California Health & Safety Code § 25249.11.

4 19. Manufacturer Defendants engage in the process of research, testing, designing,
5 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
6 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
7 more of the Products for sale or use in the State of California.

8 20. Defendant DOES 201-400 (“Distributor Defendants”) are each persons doing
9 business within the meaning of California Health & Safety Code § 25249.11.

10 21. Distributor Defendants distribute, exchange, transfer, process and/or transport one
11 or more of the Products to individuals, businesses or retailers for sale or use in the State of
12 California.

13 22. Defendant DOES 401-600 (“Retailer Defendants”) are each persons doing
14 business within the meaning of California Health & Safety Code § 25249.11.

15 23. Retailer Defendants offer the Products for sale primarily to individuals in the
16 State of California.

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

22 25. Defendant Flapdoodles, Retailer Defendants, Distributor Defendants and
23 Manufacturer Defendants shall hereafter be collectively referred to as “Defendants”

24 **VENUE AND JURISDICTION**

25 26. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
26 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
27 because one or more instances of wrongful conduct occurred, and continues to occur, in the City
28

1 and County of San Francisco and/or because Defendants conducted, and continue to conduct,
2 business in this County with respect to the Products.

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

7 28. The California Superior Court has jurisdiction over Defendants based on
8 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation or
9 association that either are citizens of the State of California, have sufficient minimum contacts in
10 the State of California, or otherwise purposefully avail themselves of the California market.
11 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California
12 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 29. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 28, inclusive.

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

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

25 32. On December 15, 2009, a sixty-day notice of violation, together with the requisite
26 certificate of merit, was provided to Flapdoodles, Mamiye and various public enforcement
27 agencies stating that as a result of Defendants’ sales of the products listed above in paragraph 7,
28 purchasers and users in the State of California were being exposed to the Listed Chemical

1 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers
2 and users first having been provided with a “clear and reasonable warning” regarding such toxic
3 exposures; and

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

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

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

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

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

21 38. The normal and reasonably foreseeable use of the Products has caused and
22 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
23 27 CCR § 25602(b).

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

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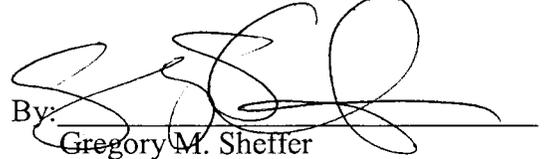
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- 1 3. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and
2 4. That the Court grants such other and further relief as may be just and proper.

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4 Dated: March 31, 2010

Respectfully Submitted,

THE CHANLER GROUP

6
7 By: 

8 Gregory M. Sheffer
9 Attorneys for Plaintiff
10 JOHN MOORE