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11 ENDORSED FILED  
12 SUPERIOR COURT  
13 COUNTY OF SAN FRANCISCO

14 DEC 23 2010

15 CASE MANAGEMENT CONFERENCE SET  
16 BY: \_\_\_\_\_

17 CLERK OF THE COURT  
18 PARAM NATT

19 Deputy Clerk

20 DEC 23 2010 9:00 AM

21 DEPARTMENT 212

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
23 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
24 UNLIMITED CIVIL JURISDICTION

25 JOHN MOORE,

26 Plaintiff,

27 v.

28 PARIS BUSINESS PRODUCTS, INC.;  
KMART CORPORATION and DOES 1-150,  
inclusive,

Defendants.

CGC-10-501884  
Case No. \_\_\_\_\_

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

**NATURE OF THE ACTION**

1  
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 found in  
5 padfolios/books 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 padfolios/books  
8 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State  
9 of California.

10          3.     High levels of DEHP are commonly found in and on padfolios/books that  
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
12 California.

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

18          5.     On October 23, 2003, California identified and listed DEHP as a chemical known  
19 to cause birth defects and other reproductive harm. DEHP became subject to the warning  
20 requirement one year later and was therefore subject to the “clear and reasonable warning”  
21 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*  
22 *Health & Safety Code § 25249.8.*) DEHP shall be referred to hereinafter as the “LISTED  
23 CHEMICAL.”

24          6.     Defendants manufacture, distribute, and/or sell padfolios/books containing  
25 excessive levels of the LISTED CHEMICAL including, but not limited to, *Reveal Refillable*  
26 *Padfolio, #00754 (#7 60361 10754 0)*. All such padfolios/books containing the LISTED  
27 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

28     ///







1 first having been provided with a “clear and reasonable warning” regarding such toxic  
2 exposures.

3 30. 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  
6 in 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 on  
8 information and belief that such violations will continue to occur into the future.

9 31. After receipt of the claims asserted in the sixty-day notice 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 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
14 limits.

15 33. 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  
17 LISTED CHEMICAL.

18 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
19 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
20 during the reasonably foreseeable use of the PRODUCTS.

21 35. 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  
23 defined by 27 CCR § 25602(b).

24 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
26 and/or ingestion.

27 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
28 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution and/or offering for sale or use of the  
2 PRODUCTS to individuals in the State of California.

3 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and/or other individuals in the State of California who were or who could become  
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
6 reasonably foreseeable use of the PRODUCTS.

7 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
9 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
10 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
11 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

12 40. As a consequence of the above-described acts, DEFENDANTS are liable for a  
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
14 Safety Code § 25249.7(b).

15 41. As a consequence of the above-described acts, California Health & Safety Code  
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

18  
19 **PRAYER FOR RELIEF**

20 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

21 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
22 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
23 alleged herein;

24 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
26 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
27 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures the  
28 LISTED CHEMICAL;

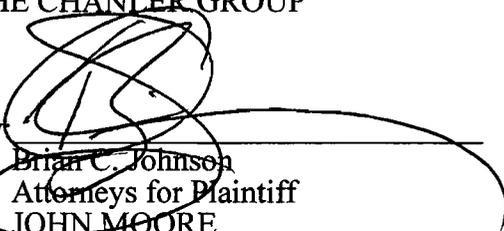
3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

THE CHANLER GROUP

Dated: July 23, 2010

By

  
Brian C. Johnson  
Attorneys for Plaintiff  
JOHN MOORE

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