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ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUL 23 2010

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
14
15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 BARNES & NOBLE, INC.; BARNES &
20 NOBLE BOOKSELLERS, INC.; and DOES 1-
21 150, inclusive,

22 Defendants.

Case No. **CGC-10-501865**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

CASE MANAGEMENT CONFERENCE SET

DEC 23 2010 9⁰⁰ AM

DEPARTMENT 212

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1 of such conduct as well as civil penalties for each such violation.

2 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
3 and permanent injunctive relief to compel defendants to provide purchasers or users of the
4 PRODUCTS with the required warning regarding the health hazards of the LISTED
5 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

6 9. Plaintiff also seeks civil penalties against defendants for their violations of
7 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

8 **PARTIES**

9 10. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to
10 protecting the health of California citizens through the elimination or reduction of toxic
11 exposures from consumer products, and brings this action in the public interest pursuant to
12 California Health & Safety Code § 25249.7.

13 11. Defendant BARNES & NOBLE, INC. ("BARNES & NOBLE") is a person doing
14 business within the meaning of California Health & Safety Code § 25249.11.

15 12. Defendant BARNES & NOBLE manufactures, distributes, and/or offers the
16 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
17 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
18 California.

19 13. Defendant BARNES & NOBLE BOOKSELLERS INC. ("B&N
20 BOOKSELLERS") is a person doing business within the meaning of California Health & Safety
21 Code § 25249.11.

22 14. Defendant B&N BOOKSELLERS manufactures, distributes, and/or offers the
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
24 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
25 California.

26 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
27 persons doing business within the meaning of California Health & Safety Code § 25249.11.

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1 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
2 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
3 engage in the process of research, testing, designing, assembling, fabricating, and/or
4 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

5 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
6 doing business within the meaning of California Health & Safety Code § 25249.11.

7 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
8 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
9 in the State of California.

10 19. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
11 business within the meaning of California Health & Safety Code § 25249.11.

12 20. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

14 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
15 unknown to plaintiff, who therefore sues said defendants by their fictitious names pursuant to
16 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
17 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
18 herein. When ascertained, their true names shall be reflected in an amended complaint.

19 22. BARNES & NOBLE, B&N BOOKSELLERS, MANUFACTURER
20 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
21 appropriate, collectively be referred to as "DEFENDANTS."

22 **VENUE AND JURISDICTION**

23 23. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
24 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, and
25 because one or more instances of wrongful conduct occurred, and continue to occur, in the
26 County of San Francisco, and/or because DEFENDANTS conducted, and continue to conduct,
27 business in this County with respect to the PRODUCTS.

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

25. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that is either a citizen of the State of California, has sufficient minimum contacts in the State of California, or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

26. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 25, inclusive.

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

28. Proposition 65 states, “[n]o 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....” (*Ibid.*)

29. On or about April 9, 2010, a sixty-day notice of violation, together with the requisite certificate of merit, was provided to BARNES & NOBLE, B&N BOOKSELLERS and various public enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California were being exposed to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning"

1 regarding such toxic exposures.

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

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

11 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL above the allowable state
13 limits.

14 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
15 distributed, and/or offered for sale or use by DEFENDANTS in California contain the LISTED
16 CHEMICAL.

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

20 35. 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
22 defined by 27 California Code of Regulations ("CCR") section 25602(b).

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

26 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
28 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for

1 sale or use to individuals in the State of California.

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

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

18 **PRAYER FOR RELIEF**

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

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

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

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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.

Dated: July 22, 2010

Respectfully Submitted,
THE CHANLER GROUP

By: 

Brian C. Johnson
Attorneys for Plaintiff
JOHN MOORE