

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 21 2010

CLERK OF THE SUPERIOR COURT
A. Mateo

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 SIXTREES USA LTD.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. RG10537575

**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 found the
5 covers of certain 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 books with
8 covers that defendants manufacture, distribute, and/or offer for sale to consumers throughout the
9 State of California.

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

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

21 5. Defendants manufacture, distribute, and/or sell books with covers containing the
22 LISTED CHEMICAL including, but not limited to, the *Sixtrees Photo Album, Item #AL230GR2*
23 *(#7 83729 13952 6)*. All such books with covers containing the LISTED CHEMICAL shall
24 hereinafter be referred to as the “PRODUCTS.”

25 6. Defendants’ failures to warn consumers and/or other individuals in the State of
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
27 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
28 of such conduct as well as civil penalties for each such violation.

1 16. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
2 doing business within the meaning of California Health & Safety Code § 25249.11.

3 17. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
4 State of California.

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

10 19. SIXTREES, MANUFACTURER DEFENDANTS, DISTRIBUTOR
11 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
12 referred to hereinafter as “DEFENDANTS.”

13 **VENUE AND JURISDICTION**

14 20. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
15 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because
16 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
17 Alameda and/or because DEFENDANTS conducted, and continue to conduct, business in this
18 County with respect to the PRODUCTS.

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

23 22. The California Superior Court has jurisdiction over DEFENDANTS based on
24 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
25 association that either are citizens of the State of California, have sufficient minimum contacts
26 in the State of California, or otherwise purposefully avail themselves of the California market.
27 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
28 California courts consistent with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants)**

3 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 22, inclusive.

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

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

13 26. On June 3, 2010, a sixty-day notice of violation, together with the requisite
14 certificate of merit, was provided to SIXTREES and various public enforcement agencies
15 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
16 the State of California were being exposed to DEHP resulting from the reasonably foreseeable
17 uses of the PRODUCTS, without the individual purchasers and users first having been provided
18 with a “clear and reasonable warning” regarding such toxic exposures.

19 27. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
20 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
21 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
22 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
23 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
24 believes that such violations will continue to occur into the future.

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

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1 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
3 limits.

4 30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
6 LISTED CHEMICAL.

7 31. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
8 to expose individuals to the LISTED CHEMICAL through dermal contact, and/or ingestion
9 during the reasonably foreseeable use of the PRODUCTS.

10 32. The normal and reasonably foreseeable use of the PRODUCTS has caused and
11 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
12 defined by 27 CCR § 25602(b).

13 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
15 and/or ingestion.

16 34. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
17 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
18 accidental participation in the manufacture, distribution and/or offer for sale or use of
19 PRODUCTS to individuals in the State of California.

20 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and/or other individuals in the State of California who were or who could become
22 exposed to the LISTED CHEMICAL through dermal contact, and/or ingestion during the
23 reasonably foreseeable use of the PRODUCTS.

24 36. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
25 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
26 contact, and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
27 by DEFENDANTS without a “clear and reasonable warning,” have suffered,

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1 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate
2 remedy at law.

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

6 38. 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
8 DEFENDANTS.

9 39. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
10 hereinafter.

11 **PRAYER FOR RELIEF**

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

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

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

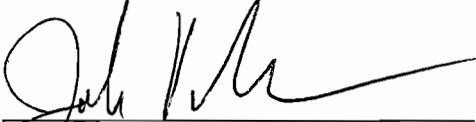
21 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

22 4. That the Court grant such other and further relief as may be just and proper.

23 Respectfully Submitted,

24 Dated: September 21, 2010

THE CHANLER GROUP

25
26 By: 
27 Josh Voorhees
Attorneys for Plaintiff
28 JOHN MOORE