

**ENDORSED  
FILED**  
San Francisco County Superior Court

SEP 10 2010

CLERK OF THE COURT  
BY: PARAM NATT  
Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

FEB 10 2011 9<sup>00</sup> AM

DEPARTMENT 212

6 Attorneys for Plaintiff  
JOHN MOORE

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

12 JOHN MOORE,

13 Plaintiff,

14 v.

15  
16 PIONEER PHOTO ALBUMS, INC.; and  
DOES 1-150, inclusive,

17 Defendants.  
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Case No. CGC - 10 - 503423

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

10 3. High levels of DEHP are commonly found in and on the covers of 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 Cal. Code Regs., § 27001  
22 (c); Cal. Health & Safety Code § 25249.8.) DEHP shall be referred to hereinafter as the  
23 “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, and/or sell books with covers containing  
25 excessive levels of the LISTED CHEMICAL including, but not limited to, *Frame Cover Album,*  
26 *Style No. KZ-46 (#0 23602 02402 1).* All such books with covers containing the LISTED  
27 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”  
28

1 7. Defendants' failures to warn consumers and/or other individuals in the State of  
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
3 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder  
4 of such conduct as well as civil penalties for each such violation.

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

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

11 **PARTIES**

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

16 11. Defendant PIONEER PHOTO ALBUMS, INC. ("PIONEER") is a person doing  
17 business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendant PIONEER manufactures, distributes, and/or offers the PRODUCTS for  
19 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,  
20 and/or offers the PRODUCTS for sale or use in the State of California.

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

23 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
24 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
25 engage in the process of research, testing, designing, assembling, fabricating, and/or  
26 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

1           16.   DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
2 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
3 in the State of California.

4           17.   Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing  
5 business within the meaning of California Health & Safety Code § 25249.11.

6           18.   RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
7 State of California.

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

13           20.   PIONEER, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be  
15 referred to as “DEFENDANTS.”

16   **VENUE AND JURISDICTION**

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

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

26           23.   The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
28 association that either is a citizen of the State of California, has sufficient minimum contacts in

1 the State of California, or otherwise purposefully avails itself of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 23, inclusive.

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

12 26. Proposition 65 states, "[n]o person in the course of doing business shall  
13 knowingly and intentionally expose any individual to a chemical known to the state to cause  
14 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
15 individual...." (*Ibid.*)

16 27. On or about June 17, 2010, a sixty-day notice of violation, together with the  
17 requisite certificate of merit, was provided to PIONEER and various public enforcement  
18 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers  
19 and users in the State of California were being exposed to DEHP resulting from the reasonably  
20 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
21 been provided with a "clear and reasonable warning" regarding such toxic exposures.

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

28 ///

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

4           30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
6 limits.

7           31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
8 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
9 LISTED CHEMICAL.

10          32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
11 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
12 during the reasonably foreseeable use of the PRODUCTS.

13          33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
14 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposure is  
15 defined by 27 California Code of Regulations (“CCR”) section 25602(b).

16          34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
18 and/or ingestion.

19          35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
21 accidental participation in the manufacture, distribution and/or offering for sale or use, the  
22 PRODUCTS to individuals in the State of California.

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

27          37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
2 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 39. As a consequence of the above-described acts, California Health & Safety Code  
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

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

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

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

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

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

22  
23 Dated: September 10, 2010

Respectfully Submitted,  
THE CHANTLER GROUP

24  
25  
26 By: 

Brian Johnson  
Attorneys for Plaintiff  
JOHN MOORE