

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

FILED

FEB 23 2011

**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT**

By: D. Taylor, Deputy

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

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 KRACO ENTERPRISES, LLC;
19 WAL-MART STORES, INC.; and DOES 1-
20 150, inclusive,

21 Defendants.

Case No. CIV 110098 J

**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 vinyl
5 mats and automotive seat covers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to
7 warn California citizens about their exposure to DEHP, present in or on certain vinyl mats and
8 automotive seat covers that Defendants manufacture, import, distribute, and/or offer for sale to
9 consumers throughout the 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.*)

20 5. Defendants KRACO ENTERPRISES, LLC (“KRACO”) and WAL-MART
21 STORES, INC., (“WAL-MART”), (collectively “Defendants”), manufacture, import, distribute,
22 and/or sell automotive seat covers containing DEHP including, but not limited to *Auto*
23 *Expressions Seat Cover, Part #80001457 (#0 19912 00040 4).*

24 6. KRACO manufactures, imports, distributes, and/or sells vinyl mats containing
25 DEHP including, but not limited to *Utility All Purpose mat, U-810 (#0 33299 25071 9).*

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

3 29. On October 29, 2010, a supplemental sixty-day notice of violation, together with
4 the requisite Certificate of Merit, (“October 29, 2010 Notice”), was provided to KRACO, WAL-
5 MART, and various public enforcement agencies stating that as a result of Defendants’ sales of
6 the PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
7 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
8 purchasers and users first having been provided with a “clear and reasonable warning” regarding
9 such toxic exposures.

10 30. The June 17, 2010 Notice and October 29, 2010 Notice shall hereinafter
11 collectively be referred to as the “Notices”.

12 31. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
13 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
14 25249.6 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of the
15 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
16 continued to occur beyond DEFENDANTS’ receipt of the Notices. Plaintiff further alleges and
17 believes that such violations will continue to occur in the future.

18 32. After receipt of the claims asserted in the Notices, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action against
20 DEFENDANTS under Proposition 65.

21 33. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
22 use in California by DEFENDANTS contained DEHP above the allowable state limits.

23 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
24 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
25 DEHP.

1 35. DEHP was present in or on the PRODUCTS in such a way as to expose
2 individuals to DEHP through dermal contact, ingestion and/or inhalation during the reasonably
3 foreseeable use of the PRODUCTS.

4 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
5 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
6 27 California Code of Regulations (“CCR”) § 25602(b).

7 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS would expose individuals to DEHP through dermal contact, ingestion and/or
9 inhalation.

10 38. DEFENDANTS intended that such exposures to DEHP from the reasonably
11 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
12 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
13 individuals in the State of California.

14 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and/or other individuals in the State of California who were or who could become
16 exposed to DEHP through dermal contact, ingestion and/or inhalation during the reasonably
17 foreseeable use of the PRODUCTS.

18 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
19 directly by California voters, individuals exposed to DEHP through dermal contact, ingestion
20 and/or inhalation, resulting from the reasonably foreseeable use of the PRODUCTS, sold by
21 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
22 irreparable harm, for which harm they have no plain, speedy, or adequate remedy at law.

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

