

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint (“Complaint”) is a representative action brought by
3 plaintiff JOHN MOORE, in the public interest of the citizens of the State of California, to
4 enforce the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”),
5 a toxic chemical found in automotive seat covers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about their exposure to DEHP present in or on certain automotive seat covers
8 that defendants manufacture, import, distribute, sell and/or offer for sale to consumers
9 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 24, 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 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendants KRACO ENTERPRISES, LLC (“KRACO”), WAL-MART STORES,
21 INC., (“WAL-MART”), and AUTO EXPRESSIONS, LLC (“AUTO EXPRESSIONS”)
22 manufacture, import, distribute, sell, and/or offer for sale automotive seat covers containing
23 DEHP including, but not limited to *Auto Expressions Seat Cover, Part #80001457 (#0 19912*
24 *00040 4).*

25 6. All such automotive seat covers containing DEHP shall hereinafter be collectively
26 referred to as the “PRODUCTS.”

27 7. Defendants’ failure to warn consumers and/or other individuals in the State of
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1 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
2 *seq.* about their exposure to DEHP in conjunction with defendants' distribution, importation,
3 manufacturing, sale and/or offering for sale of the PRODUCTS is a violation of Proposition 65
4 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
5 violation.

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

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

12 PARTIES

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

17 11. KRACO is a person doing business within the meaning of California Health &
18 Safety Code § 25249.11.

19 12. KRACO manufactures, imports, distributes, sells and/or offers the PRODUCTS for
20 sale or use in the State of California or implies by its conduct that it manufactures, imports,
21 distributes, sells and/or offers the PRODUCTS for sale or use in the State of California.

22 13. WAL-MART is a person doing business within the meaning of California Health
23 & Safety Code § 25249.11.

24 14. WAL-MART manufactures, imports, distributes, sells and/or offers the
25 PRODUCTS for sale or use in the State of California or implies by its conduct that it
26 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
27 of California.

1 15. AUTO EXPRESSIONS is a person doing business within the meaning of
2 California Health & Safety Code § 25249.11.

3 16. AUTO EXPRESSIONS manufactures, imports, distributes, sells and/or offers the
4 PRODUCTS for sale or use in the State of California or implies by its conduct that it
5 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
6 of California.

7 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
8 doing business within the meaning of California Health & Safety Code § 25249.11.

9 18. MANUFACTURER DEFENDANTS engage in the process of researching, testing,
10 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
11 engage in the process of research, testing, designing, assembling, fabricating, and/or
12 manufacturing.

13 19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
14 doing business within the meaning of California Health & Safety Code § 25249.11.

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

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

20 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
21 State of California and, in some circumstances, may also be manufacturers and/or distributors.

22 23. At this time, the true names of defendants DOES 1 through 150, inclusive, are
23 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
24 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
25 each of the fictitiously named defendants is responsible for the acts and occurrences herein
26 alleged. When ascertained, their true names shall be reflected in an amended complaint.
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1 30. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
2 and intentionally expose any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warning to such individual....”

4 (*Id.*)

5 31. On June 17, 2010, a 60-Day Notice of violation, together with the requisite
6 Certificate of Merit (“June 17, 2010, Notice”), was provided to KRACO and various public
7 enforcement agencies regarding a product not at issue in this Complaint.

8 32. On October 29, 2010, a Supplemental 60-Day Notice of Violation, together with
9 the requisite Certificate of Merit, (“October 29, 2010, Notice”), was provided to KRACO, WAL-
10 MART, and various public enforcement agencies stating that as a result of KRACO and WAL-
11 MART’s sale, manufacture and/or distribution of the PRODUCTS, purchasers and users in the
12 State of California were being exposed to DEHP resulting from the reasonably foreseeable uses
13 of the PRODUCTS, without the individual purchasers and users first having been provided with
14 a “clear and reasonable warning” regarding such toxic exposures.

15 33. On December 30, 2010, a Second Supplemental 60-Day Notice of Violation,
16 together with the requisite Certificate of Merit, (“December 30, 2010, Notice”), was provided to
17 KRACO, WAL-MART, and various public enforcement agencies stating that as a result of
18 KRACO and WAL-MART’s sale, manufacture and/or distribution of the PRODUCTS,
19 purchasers and users in the State of California were being exposed to DEHP resulting from the
20 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
21 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

22 34. On April 25, 2011, a Third Supplemental 60-Day Notice of Violation, together
23 with the requisite Certificate of Merit, (“April 25, 2011, Notice”), was provided to AUTO
24 EXPRESSIONS, KRACO, WAL-MART, and various public enforcement agencies stating that
25 as a result of their sale, manufacture and/or distribution of the PRODUCTS, purchasers and users
26 in the State of California were being exposed to DEHP resulting from the reasonably foreseeable
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1 uses of the PRODUCTS, without the individual purchasers and users first having been provided
2 with a “clear and reasonable warning” regarding such toxic exposures.

3 35. The October 29, 2010, Notice, December 30, 2010, Notice and April 25, 2011,
4 Notice shall hereinafter collectively be referred to as the “Notices”.

5 36. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
6 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
7 Code § 25249.6 and DEFENDANTS’ manufacture, importation, distribution, sale, and/or
8 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
9 § 25249.6 has continued to occur beyond DEFENDANTS’ receipt of the Notices. Plaintiff
10 further alleges and believes that such violations will continue to occur in the future.

11 37. After receipt of the claims asserted in the Notices, the appropriate public
12 enforcement agencies have failed to commence and diligently prosecute a cause of action against
13 DEFENDANTS under Proposition 65.

14 38. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for sale
15 or use in California by DEFENDANTS contained DEHP above the allowable state limits.

16 39. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
17 imported, distributed, sold, and/or offered for sale or use by DEFENDANTS in California
18 contained DEHP.

19 40. DEHP was present in or on the PRODUCTS in such a way as to expose
20 individuals to DEHP through dermal contact, ingestion and/or inhalation during the reasonably
21 foreseeable use of the PRODUCTS.

22 41. The normal and reasonably foreseeable use of the PRODUCTS has caused and
23 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
24 27 California Code of Regulations (“CCR”) § 25602(b).

25 42. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
26 the PRODUCTS would expose individuals to DEHP through dermal contact, ingestion and/or
27 inhalation.

1 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
2 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;

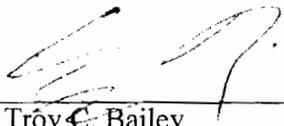
3 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

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6 Dated: August 22, 2011

Respectfully Submitted,

THE CHANLER GROUP

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9 By: 

Troy C. Bailey
Attorneys for Plaintiff
JOHN MOORE

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