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**ENDORSED
FILED**
San Francisco County Superior Court

OCT -1 2010

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

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

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 Z-INTERNATIONAL, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

Case No. CG-10-504324

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

CASE MANAGEMENT CONFERENCE SET

MAR - 4 2011 9⁰⁰ AM

DEPARTMENT 212

NATURE OF THE ACTION

1
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
5 erasers 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 erasers that defendants
8 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

9 3. High levels of DEHP are commonly found in and on the erasers that defendants
10 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

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

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

22 6. Defendants manufacture, distribute, and/or sell erasers containing excessive levels
23 of the LISTED CHEMICAL including, but not limited to, *Z Artist’s Eraser, #98828 (#0 82032*
24 *98828 0)*. All such erasers containing the LISTED CHEMICAL shall hereinafter be referred to
25 as the “PRODUCTS.”

26 7. Defendants’ failures to warn consumers and/or other individuals in the State of
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
28 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder

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 Z-INTERNATIONAL, INC. ("Z-INTERNATIONAL") is a person
14 doing business within the meaning of California Health & Safety Code § 25249.11.

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

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

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

27 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
28 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use

1 in the State of California.

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

4 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
5 State of California.

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

11 20. Z-INTERNATIONAL, MANUFACTURER DEFENDANTS, DISTRIBUTOR
12 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
13 referred to as “DEFENDANTS.”

14 **VENUE AND JURISDICTION**

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

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

24 23. The California Superior Court has jurisdiction over DEFENDANTS based on
25 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
26 association that either is a citizen of the State of California, has sufficient minimum contacts in
27 the State of California, or otherwise purposefully avails itself of the California market.
28 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by

1 California courts consistent with traditional notions of fair play and substantial justice.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

14 27. On or about July 1, 2010, a sixty-day notice of violation, together with the
15 requisite certificate of merit, was provided to Z-INTERNATIONAL and various public
16 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS,
17 purchasers and users in the State of California were being exposed to DEHP resulting from the
18 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
19 first having been provided with a “clear and reasonable warning” regarding such toxic
20 exposures.

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

27 29. After receipt of the claims asserted in the sixty-day notice of violation, the
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a

1 cause of action against DEFENDANTS under Proposition 65.

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

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

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

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

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

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

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

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

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

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

5 39. As a consequence of the above-described acts, California Health & Safety Code
6 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
7 DEFENDANTS.

8 **PRA YER FOR RELIEF**

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

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


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

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

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

20
21 Dated: October 1, 2010

Respectfully Submitted,
THE CHANLER GROUP

22
23
24 By: 
25 Brian C. Johnson
Attorneys for Plaintiff
JOHN MOORE