

ENDORSED
FILED
San Francisco County Superior Court

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CLERK OF THE COURT

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CASE MANAGEMENT CONFERENCE SET

FEB 10 2011 - 9:00 AM

Attorneys for Plaintiff
JOHN MOORE

DEPARTMENT 308

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

11
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 ELEGANT USA, LLC; and DOES 1-150,
16 inclusive,

17 Defendants.

CGC-10-503506
Case No. _____

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
5 automotive seat covers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens and others about their exposure to DEHP present in or on certain
8 automotive seat covers that defendants manufacture, 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.*) DEHP shall be referred to hereinafter as the “LISTED
20 CHEMICAL.”

21 5. Defendants manufacture, import, distribute, and/or sell automotive seat covers
22 containing the LISTED CHEMICAL including, but not limited to, the *Elegant USA Automotive*
23 *Accessories Seat Cover, Razor, #329212X (#0 27323 61750 0)*. All such automotive seat covers
24 containing the LISTED CHEMICAL shall 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 **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 July 1, 2010, a sixty-day notice of violation, together with the requisite
14 certificate of merit, was provided to ELEGANT USA 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, importation, distribution,
20 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
21 Code § 25249.6 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of
22 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
23 continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation.
24 Plaintiff further alleges and 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.
28

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

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, ingestion, and/or inhalation
23 during the 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, ingestion, and/or inhalation resulting from the reasonably foreseeable use of the
27 PRODUCTS, sold by DEFENDANTS without a “clear and reasonable warning,” have suffered,
28

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 13, 2010

THE CHANLER GROUP

25
26 By: 
27 Clifford A. Chanler
28 Attorneys for Plaintiff
JOHN MOORE