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

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 ACE BAYOU CORP.; and DOES 1-150,  
19 inclusive,

20 Defendants.

Case No. RG 10553319

**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 the  
3 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 floor  
5 chairs 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 certain floor chairs that  
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
9 California.

10 3. Elevated levels of DEHP are commonly found in and on floor chairs that  
11 defendants manufacture, distribute, and/or offer for sale to consumers and businesses throughout  
12 the State of 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 CCR § 27001 (c); Cal.*  
22 *Health & Safety Code § 25249.8.*)

23 6. DEHP shall hereinafter be referred to as the “Listed Chemical.”

24 7. Defendants manufacture, distribute, and/or sell floor chairs containing excessive  
25 levels of the Listed Chemical including, but not limited to, *Video Rocker (#0 94338 51055 3)*.  
26 All such floor chairs containing excessive levels of the Listed Chemical shall hereinafter be  
27 referred to as the “Products.”  
28



1 8. 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' sale of  
3 the Products is a violation of Proposition 65 and subjects defendants to enjoinder of such  
4 conduct as well as civil penalties for each such violation.

5 9. 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 Chemical. (*Cal.*  
8 *Health & Safety Code § 25249.7(a).*)

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

11 **PARTIES**

12 11. 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 12. Defendant Ace Bayou Corp. ("Ace Bayou") is a person doing business within the  
17 meaning of California Health & Safety Code § 25249.11.

18 13. Defendant Ace Bayou 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 14. Defendants DOES 1-50 ("Manufacturer Defendants") are each persons doing  
22 business within the meaning of California Health & Safety Code § 25249.11.

23 15. Manufacturer Defendants engage in the process of researching, testing, designing,  
24 assembling, fabricating, and/or manufacturing, or imply by their conduct that they engage in the  
25 process of researching, testing, designing, assembling, fabricating, and/or manufacturing, one or  
26 more of the Products for sale or use in the State of California.

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



1 the State of California, or otherwise purposefully avail themselves of the California market.  
2 Defendants' purposeful avilment renders the exercise of personal jurisdiction by California  
3 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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 24, inclusive.

8 26. The citizens of the State of California have expressly stated in Proposition 65 that  
9 they must be informed “about exposures to chemicals that cause cancer, birth defects and other  
10 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

11 27. Proposition 65 states, “No person in the course of doing business shall knowingly  
12 and intentionally expose any individual to a chemical known to the state to cause cancer or  
13 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
14 (*Id.*)

15 28. On July 1, 2010, a sixty-day notice of violation, together with the requisite  
16 certificate of merit, was provided to Ace Bayou and various public enforcement agencies stating  
17 that as a result of Ace Bayou's sales of the Products, purchasers and users in the State of  
18 California were being exposed to the Listed Chemical resulting from the reasonably foreseeable  
19 uses of the Products, without the individual purchasers and users first having been provided with  
20 a “clear and reasonable warning” regarding such toxic exposures.

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

27 30. 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 31. The Products manufactured, distributed, and/or offered for sale or use in  
3 California by Defendants contained the Listed Chemical above the allowable state limits.

4 32. 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 Listed  
6 Chemical.

7 33. The Listed Chemical was present in or on the Products in such a way as to expose  
8 individuals to the Listed Chemical through dermal contact, ingestion, and/or inhalation during  
9 the reasonably foreseeable use of the Products.

10 34. 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 defined by  
12 27 CCR § 25602(b).

13 35. Defendants had knowledge that the normal and reasonably foreseeable use of the  
14 Products would expose individuals to the Listed Chemical through dermal contact, ingestion,  
15 and/or inhalation.

16 36. Defendants, and each of them, intended that such exposures to the Listed  
17 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,  
18 non-accidental participation in the manufacture, distribution, and/or offer for sale or use of  
19 Products to individuals in the State of California.

20 37. Defendants failed to provide a "clear and reasonable warning" to those consumers  
21 and/or other individuals in the State of California who were or who could become exposed to the  
22 Listed Chemical through dermal contact, ingestion, and/or inhalation during the reasonably  
23 foreseeable use of the Products.

24 38. 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 contact,  
26 ingestion, and/or inhalation resulting from the reasonably foreseeable use of the Products, sold  
27 by Defendants without a "clear and reasonable warning," have suffered, and continue to suffer,  
28 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

