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

13 CGC-11-507915

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 THREE HANDS CORPORATION; and
18 DOES 1-150, inclusive,

19 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

VIA FAX

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

10 3. Elevated levels of DEHP are commonly found in and on storage furniture 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 Cal. Code Regs. (“CCR”)*
22 *§ 27001 (c); Cal. 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 storage furniture containing
25 excessive levels of the Listed Chemical including, but not limited to, *Storage Chest, Item No.*
26 *37169 (#7 26674 37169 6)*. All such storage furniture containing excessive levels of the Listed
27 Chemical shall hereinafter be referred to as the “Products.”

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 Defendants' purposeful availment 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 September 1, 2010, a sixty-day notice of violation, together with the requisite
16 certificate of merit, was provided to Three Hands and various public enforcement agencies
17 stating that as a result of Three Hands' 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 ingestion, dermal contact, 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 ingestion, dermal contact,
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 ingestion, dermal contact, 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 ingestion,
26 dermal contact, and/or inhalation resulting from the reasonably foreseeable use of the Products,
27 sold by Defendants without a “clear and reasonable warning,” have suffered, and continue to
28 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

