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ALAMEDA COUNTY

10 DEC 28 PM 12:10

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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 FOREMOST GROUPS, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

21 Case No. RG 10553310

22 **COMPLAINT FOR CIVIL PENALTIES
23 AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1
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 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 storage furniture containing
25 excessive levels of the Listed Chemical including, but not limited to, *Target Home Storage*
26 *Ottoman, #249 12 0119, ID059444-VCC-LE (#7 21015 72455 1)*. All such storage furniture
27 containing excessive levels of the Listed Chemical shall hereinafter be referred to as the
28 “Products.”

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 Foremost Groups, Inc. ("Foremost") is a person doing business within
17 the meaning of California Health & Safety Code § 25249.11.

18 13. Defendant Foremost manufactures, distributes, and/or offers the Products for sale
19 or use in the State of California or implies by its conduct that it manufactures, distributes, and/or
20 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 17. Distributor Defendants distribute, exchange, transfer, process, and/or transport
2 one or more of the Products to individuals, businesses, or retailers for sale or use in the State of
3 California.

4 18. Defendants DOES 101-150 (“Retailer Defendants”) are each persons doing
5 business within the meaning of California Health & Safety Code § 25249.11.

6 19. Retailer Defendants offer one or more of the Products for sale to individuals in the
7 State of California.

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

13 21. Defendants Foremost, Manufacturer Defendants, Distributor Defendants, and
14 Retailer Defendants shall, where appropriate, collectively be referred to hereinafter as
15 “Defendants.”

VENUE AND JURISDICTION

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

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

26 24. The California Superior Court has jurisdiction over Defendants based on
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in

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 Foremost and various public enforcement agencies stating
17 that as a result of Foremost's sales of the Products, purchasers and users in the State of California
18 were being exposed to the Listed Chemical resulting from the reasonably foreseeable uses of the
19 Products, without the individual purchasers and users first having been provided with a “clear
20 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.

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

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

6 **PRAYER FOR RELIEF**

7 Wherefore, plaintiff prays for judgment against Defendants as follows:

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

11 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
12 preliminarily and permanently enjoin Defendants, and each of them, from manufacturing,
13 distributing, and/or offering the Products for sale or use in California, without providing "clear
14 and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with
15 exposures to the Listed Chemical;

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

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

18 Respectfully Submitted,

19 THE CHANLER GROUP

20 By: 
21

22 Josh Voorhees
23 Attorneys for Plaintiff
24 JOHN MOORE
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