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**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

MS. DEE. INC.; and DOES 1-150, inclusive.

Defendants.

Case No. CIV1101224

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

BY FAX

FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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 coverings for books/journals, marker pouches and bracelets 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 coverings for
8 books/journals, marker pouches and bracelets that defendant manufactures, distributes, and/or
9 offers for sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on coverings for
11 books/journals, maker pouches and bracelets that defendant manufactures, distributes, and/or
12 offers for sale to consumers throughout 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 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as
19 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the "clear
21 and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27
22 *CCR* § 27001(c); *Cal. Health & Safety Code* §§ 25249.8 & 25249.10(b).)

23 6. Defendant manufactures, distributes, and/or sells coverings for books/journals
24 containing DEHP including, but not limited to, the *Molly 'n Me Notebook* (#0 75656 03121 0).

25 7. Defendant manufactures, distributes, and/or sells marker pouches containing
26 DEHP including, but not limited to, the *Molly 'n Me Glitter Gel Tattoo Pens*, #650C001 (#7
27 36515 94874 1).

1 8. Defendant manufactures, distributes, and/or sells bracelets containing DEHP
2 including, but not limited to, *Molly 'n Me Bracelet, #179J358 (#7 36515 95441 4)*.

3 9. All such coverings for books/journals, marker pouches and bracelets containing
4 DEHP identified in paragraphs 6, 7 and 8 above shall hereinafter be collectively referred to as the
5 "PRODUCTS."

6 10. Defendant's failure to warn consumers and/or other individuals in the state of
7 California about their exposure to DEHP in conjunction with defendant's sale of the
8 PRODUCTS is a violation of Proposition 65 and subjects defendant to enjoinder of such
9 conduct as well as civil penalties for each such violation.

10 11. For defendant's violations of Proposition 65, plaintiff seeks preliminary injunctive
11 and permanent injunctive relief to compel defendant to provide purchasers or users of the
12 PRODUCTS with the required warning regarding the health hazards of DEHP. (*Cal. Health &*
13 *Safety Code § 25249.7(a)*.)

14 12. Plaintiff also seeks civil penalties against defendant for its violations of
15 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

16 **PARTIES**

17 13. Plaintiff, JOHN MOORE, is a citizen of the state of California who is dedicated to
18 protecting the health of California citizens through the elimination or reduction of toxic
19 exposures from consumer products, and brings this action in the public interest pursuant to
20 California Health & Safety Code § 25249.7.

21 14. Defendant MS. DEE, INC. ("MS. DEE") is a person doing business within the
22 meaning of California Health & Safety Code § 25249.11.

23 15. Defendant MS. DEE manufactures, distributes, and/or offers the PRODUCTS for
24 sale or use in the state of California or implies by its conduct that it manufactures, distributes,
25 and/or offers the PRODUCTS for sale or use in the state of California.

26 16. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
27 persons doing business within the meaning of California Health & Safety Code § 25249.11.

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1 31. On or about October 28, 2011, a sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to MS. DEE and various public enforcement agencies
3 stating that as a result of the DEFENDANTS' sales of marker pouches and bracelets containing
4 DEHP, purchasers and users in the state of California were being exposed to DEHP resulting
5 from the reasonably foreseeable uses of marker pouches and bracelets, without the individual
6 purchasers and users first having been provided with a "clear and reasonable warning" regarding
7 such toxic exposures.

8 32. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
9 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
10 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in
11 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
12 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges and
13 believes that such violations will continue to occur into the future.

14 33. After receipt of the claims asserted in each of the sixty-day notices of violation,
15 the appropriate public enforcement agencies have failed to commence and diligently prosecute a
16 cause of action against DEFENDANTS under Proposition 65.

17 34. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
18 California by DEFENDANTS contained DEHP above the allowable state limits.

19 35. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
20 distributed, and/or offered for sale or use by DEFENDANTS in California contained the DEHP.

21 36. DEHP was present in or on the PRODUCTS in such a way as to expose
22 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
23 use of the PRODUCTS.

24 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
25 continues to cause consumer exposures to DEHP, as such exposure is defined by 27 CCR §
26 25602(b).

27 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
28 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: January 16, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Christopher M. Martin
Attorney for Plaintiff
JOHN MOORE