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**FILED**

**MAR 11 2011**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: *A. Main Deputy*

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 SAMSILL CORPORATION; and DOES 1-  
19 150, inclusive,

20 Defendants.

Case No. CIV 1101314

**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 soft  
5 vinyl coverings for books sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
7 California citizens about their exposure to, present in or on, certain soft vinyl coverings for  
8 books that defendants manufacture, import, distribute, and/or offers for sale to consumers and  
9 businesses throughout the State of California.

10 3. High levels of DEHP are commonly found in and on cases for soft vinyl  
11 coverings for books that defendants manufacture, distribute, and/or offer for sale to consumers  
12 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 as a chemical known to cause  
19 birth defects and other reproductive harm. DEHP became subject to the warning requirement  
20 one year later and was, therefore, subject to the “clear and reasonable warning” requirements of  
21 Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal. Health & Safety*  
22 *Code § 25249.8.*)

23 6. Defendants manufacture, import, distribute, and/or sell soft vinyl coverings for  
24 books containing DEHP including, but not limited to, *The Classic Collection Junior Pad Holder,*  
25 *Burgundy, #7000 (#0 50362 70004 9).* All such soft vinyl coverings for books, containing  
26 DEHP, shall hereinafter be collectively referred to as the “PRODUCTS.”  
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1 conduct that they engage in the process of research, testing, designing, assembling, fabricating,  
2 and/or manufacturing, of the PRODUCTS.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 doing business within the meaning of California Health & Safety Code § 25249.11.

5 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
6 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in  
7 the State of California.

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons  
9 doing business within the meaning of California Health & Safety Code § 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California and, in some circumstances, may also be manufacturers and/or distributors.

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

17 20. SAMSILL, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to hereinafter as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
22 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because  
23 one or more instances of wrongful conduct occurred, and continues to occur, in the County of  
24 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
25 County with respect to the PRODUCTS.

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

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
5 association that either are citizens of the State of California, have sufficient minimum contacts in  
6 the State of California, or otherwise purposefully avail themselves of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
8 courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 23, inclusive.

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

16 26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
17 and intentionally expose any individual to a chemical known to the state to cause cancer or  
18 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
19 (*Id.*)

20 27. On or about October 29, 2010, a sixty-day notice of violation, together with the  
21 requisite Certificate of Merit (“Notice”), was provided to SAMSILL and various public  
22 enforcement agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS,  
23 purchasers and users in the State of California were being exposed to DEHP resulting from the  
24 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
25 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

26 28. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or  
27 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
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1 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the  
2 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
3 continued to occur beyond SAMSILL's receipt of the Notice. Plaintiff further alleges and  
4 believes that such violations will continue to occur into the future.

5 29. After receipt of the claims asserted in the Notice, the appropriate public  
6 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
7 DEFENDANTS under Proposition 65.

8 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or  
9 use in California by DEFENDANTS contained DEHP above the allowable state limits.

10 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
11 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained  
12 DEHP.

13 32. DEHP was present in or on the PRODUCTS in such a way as to expose  
14 individuals to DEHP through dermal contact and ingestion during the reasonably foreseeable use  
15 of the PRODUCTS.

16 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
17 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
18 27 California Code of Regulations ("CCR") § 25602(b).

19 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
20 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

21 35. DEFENDANTS intended that such exposures to DEHP from the reasonably  
22 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
23 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to  
24 individuals in the State of California.

25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
26 consumers and/or other individuals in the State of California who were or who could become  
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1 exposed to DEHP through dermal contact and ingestion during the reasonably foreseeable use of  
2 the PRODUCTS.

3 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
4 directly by California voters, individuals exposed to DEHP through dermal contact and  
5 ingestion, resulting from the reasonably foreseeable use of the PRODUCTS, sold by  
6 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,  
7 irreparable harm, for which harm they have no plain, speedy, or adequate remedy at law.

8 38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
9 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
10 Safety Code § 25249.7(b).

11 39. As a consequence of the above-described acts, California Health & Safety Code  
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

16 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged  
18 herein;

19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
22 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;

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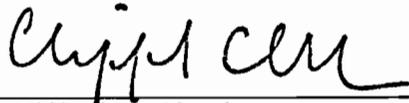
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- 1           3.       That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 2           4.       That the Court grant such other and further relief as may be just and proper.

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Dated: March 11, 2011

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
JOHN MOORE