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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 BROWNLOW PUBLISHING COMPANY;  
19 and DOES 1-150, inclusive,

20 Defendants.

21 Case No. CGC-11-511836

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

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

25 **ENDORSED  
26 FILED**  
27 *San Francisco County Superior Court*

28 JUN 20 2011

CLERK OF THE COURT

BY: DENNIS TOYAMA  
Deputy Clerk

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”) and di-n-butyl phthalate  
5 (“DBP”), toxic phthalate chemicals found in purses and/or coverings for notepads sold in  
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
8 warn California citizens about their exposure to DEHP present in or on purses and coverings for  
9 notepads manufactured, distributed, and/or offered for sale or use to consumers throughout the  
10 State of California, as well as DBP present in or on purses manufactured, distributed, and/or  
11 offered for sale or use to consumers throughout the State of California.

12 3. High levels of DEHP are commonly found in and on the purses and coverings for  
13 notepads that defendants manufacture, distribute, and/or offer for sale to consumers throughout  
14 the State of California. High levels of DBP are also commonly found on the purses that  
15 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
16 California.

17 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
18 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course  
19 of doing business shall knowingly and intentionally expose any individual to a chemical known  
20 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
21 warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

22 5. On October 24, 2003, California identified and listed DEHP as a chemical known  
23 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and  
24 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (27  
25 Cal. Code Regs., § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 & 25249.10(b).)

26 6. On December 2, 2005, California identified and listed DBP as a chemical known  
27 to cause birth defects and other reproductive harm. DBP became subject to the “clear and  
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1 reasonable warning” requirements of Proposition 65 one year later on December 2, 2006. (Tit.  
2 27 Cal. Code Regs., § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 & 25249.10(b).)  
3 DEHP and DBP shall be referred to collectively as the “LISTED CHEMICALS.”

4 7. Defendants manufacture, distribute, and/or sell coverings for notepads containing  
5 excessive levels of DEHP, including, but not limited to, the *Brownlow Gifts Fashion Notes (#7*  
6 *03800 03398 7)*.

7 8. Defendants manufacture, distribute, and/or sell purses containing excessive levels  
8 of DEHP and DBP, including, but not limited to, the *Brownlow Gifts Olivia Purse Note (#7*  
9 *03800 03413 7)*. All such coverings for notepads containing DEHP and purses containing  
10 DEHP and DBP shall hereinafter collectively be referred to as the “PRODUCTS.”

11 9. Defendants’ failure to warn consumers and/or other individuals in the State of  
12 California about their exposure to the LISTED CHEMICALS in conjunction with defendants’  
13 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder  
14 of such conduct as well as civil penalties for each such violation.

15 10. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
16 permanent injunctive relief to compel defendants to provide purchasers or users of the  
17 PRODUCTS with the required warning regarding the health hazards of the LISTED  
18 CHEMICALS. (Cal. Health & Safety Code § 25249.7(a).)

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

21 **PARTIES**

22 12. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to  
23 protecting the health of California citizens through the elimination or reduction of toxic  
24 exposures from consumer products, and brings this action in the public interest pursuant to  
25 California Health & Safety Code § 25249.7(d) .

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1           13. Defendant BROWNLOW PUBLISHING COMPANY (“BROWNLOW”) is a  
2 person in the course of doing business within the meaning of California Health & Safety Code §  
3 25249.11.

4           14. Defendant BROWNLOW manufactures, distributes, and/or offers the  
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
6 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
7 California.

8           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
9 persons in the course of doing business within the meaning of California Health & Safety Code  
10 § 25249.11.

11           16. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
12 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
13 engage in the process of research, testing, designing, assembling, fabricating, and/or  
14 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

15           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
16 in the course of doing business within the meaning of California Health & Safety Code §  
17 25249.11.

18           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
19 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
20 in the State of California.

21           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
22 the course of doing business within the meaning of California Health & Safety Code §  
23 25249.11.

24           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
25 State of California.

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

4 22. BROWNLOW, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
6 referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
9 Civil Procedure §§ 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
10 and because one or more instances of wrongful conduct occurred, and continue to occur, in the  
11 County of San Francisco, and/or because DEFENDANTS conducted, and continue to conduct,  
12 business in this County with respect to the PRODUCTS.

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

17 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
18 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
19 association that is a citizen of the State of California, has sufficient minimum contacts in the  
20 State of California, or otherwise purposefully avails itself of the California market.  
21 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
22 California courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

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

25 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
26 Paragraphs 1 through 25, inclusive.

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1           27. The citizens of the State of California have expressly stated in the Safe Drinking  
2 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*  
3 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
4 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

5           28. Proposition 65 states, “[n]o person in the course of doing business shall  
6 knowingly and intentionally expose any individual to a chemical known to the state to cause  
7 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
8 individual....” (*Ibid.*)

9           29. On or about March 17, 2011, plaintiff’s sixty-day notice of violation, together  
10 with the requisite certificate of merit, was provided to BROWNLOW and various public  
11 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of purses and  
12 coverings for notepads, purchasers and users in the State of California were being exposed to  
13 the LISTED CHEMICALS resulting from the reasonably foreseeable uses of the PRODUCTS,  
14 without the individual purchasers and users first having been provided with a “clear and  
15 reasonable warning” regarding such toxic exposures.

16           30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
17 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
18 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
19 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
20 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and  
21 believes that such violations will continue to occur into the future.

22           31. After receipt of the claims asserted in the sixty-day notice of violation, the  
23 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
24 cause of action against DEFENDANTS under Proposition 65.

25           32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
26 California by DEFENDANTS contained the LISTED CHEMICALS in amounts above the  
27 allowable state limits.

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1           33. DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufactured, distributed, and/or offered for sale or use in California contained the LISTED  
3 CHEMICALS.

4           34. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way  
5 as to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
6 during the reasonably foreseeable use of the PRODUCTS.

7           35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
8 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are  
9 defined by Title 27 California Code of Regulations (“CCR”) § 25602(b).

10          36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
11 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal  
12 contact and/or ingestion.

13          37. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from  
14 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
15 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
16 sale or use to individuals in the State of California.

17          38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
18 consumers and/or other individuals in the State of California who were or who could become  
19 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the  
20 reasonably foreseeable use of the PRODUCTS.

21          39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
22 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal  
23 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
24 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
25 suffer, irreparable harm, for which they have no plain, speedy, or adequate remedy at law.

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