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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 BUXTON ACQUISITION CO., L.L.C.; and
19 DOES 1-150, inclusive,

20 Defendants.

Case No. **CGC-11-512248**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

SAN FRANCISCO COUNTY
COURT
JUL 11 2011 7 AM 1:00
JMT
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”), a toxic chemical found in
5 coverings for books/journals 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 coverings for
8 books/journals manufactured, distributed, and/or offered for sale or use to consumers
9 throughout the State of California.

10 3. High levels of DEHP are commonly found in and on the coverings for
11 books/journals 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 DEHP as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
20 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (27
21 Cal. Code Regs., § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 & 25249.10(b).) DEHP
22 shall be referred to hereinafter as the “LISTED CHEMICAL”.

23 6. Defendants manufacture, distribute, and/or sell coverings for books/journals
24 containing excessive levels of DEHP, including, but not limited to, the *Buxton Writing Pad*
25 *Folio, #36-006 (#0 43345 82831 1)*. All such coverings for books/journals containing DEHP
26 shall hereinafter collectively be referred to as the “PRODUCTS.”

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1 engage in the process of research, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 in the course of doing business within the meaning of California Health & Safety Code §
5 25249.11.

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

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
10 the course of doing business within the meaning of California Health & Safety Code §
11 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 20. BUXTON, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
21 referred to as “DEFENDANTS.”

22 VENUE AND JURISDICTION

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

1 purchasers and users first having been provided with a “clear and reasonable warning”
2 regarding such toxic exposures.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
5 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use
6 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond
7 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
8 believes that such violations will continue to occur into the future.

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

12 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL in amounts above the
14 allowable state limits.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufactured, distributed, and/or offered for sale or use in California contained the LISTED
17 CHEMICAL.

18 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
19 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
20 during the reasonably foreseeable use of the PRODUCTS.

21 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
22 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
23 defined by Title 27 California Code of Regulations (“CCR”) § 25602(b).

24 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
26 and/or ingestion.

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1 reasonable warnings” as defined by Tit. 27 CCR § 25601, as to the harms associated with
2 exposure the LISTED CHEMICAL;

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

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

5 Dated: July 5, 2011

6 Respectfully Submitted,
7 THE CHANLER GROUP

8 By: 

9 Brian C. Johnson
10 Attorneys for Plaintiff
11 JOHN MOORE
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