

SAN FRANCISCO COUNTY
2011 SEP 30 PM 1:09
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JOHN MOORE

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

JOHN MOORE,

Plaintiff,

v.

C & S WHOLESALE GROCERS, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. **CGC-11-514766**

**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”) and di-n-butyl phthalate
5 (“DBP”), toxic chemicals found in footwear sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about their exposure to DEHP and DBP, present in or on footwear that
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of
9 California.

10 3. High levels of DEHP and DBP are commonly found in and on the footwear that
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of
12 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. (Tit.
21 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
22 25249.10(b).)

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

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

5 17. 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
7 in the state of California.

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

10 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 state of California.

12 20. 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 alleged
16 herein. When ascertained, their true names shall be reflected in an amended complaint.

17 21. C & S, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
18 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
19 “DEFENDANTS.”

20 VENUE AND JURISDICTION

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

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

3 24. 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 is a citizen of the state of California, has sufficient minimum contacts in the
6 state of California, or otherwise purposefully avails itself of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California 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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 24, inclusive.

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

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

21 28. On or about April 8, 2011, a plaintiff’s sixty-day notice of violation, together with
22 the requisite certificate of merit, was provided to C & S and various public enforcement
23 agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers
24 and users in the state of California are being exposed to excessive amounts of the LISTED
25 CHEMICALS resulting from the reasonably foreseeable use of the PRODUCTS, without the
26 individual purchasers and users first having been provided with a “clear and reasonable
27 warning” regarding such toxic exposures.

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

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

9 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
10 California by DEFENDANTS, contain the LISTED CHEMICALS in amounts above the
11 allowable state limits, such that they require a "clear and reasonable" warning.

12 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
13 distributed, and/or offered for sale or use by DEFENDANTS in California contain the LISTED
14 CHEMICALS.

15 33. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way
16 as to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
17 during the reasonably foreseeable use of the PRODUCTS.

18 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
19 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposure is
20 defined by 27 CCR § 25602(b).

21 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
22 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal
23 contact and/or ingestion.

24 36. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
25 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
26 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
27 sale or use to individuals in the state of California.

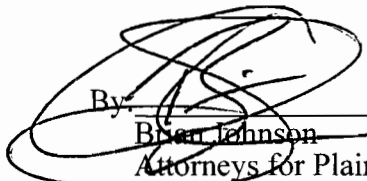
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4. That the Court grant such other and further relief as may be just and proper.

Dated: September 30 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 

Brian Johnson
Attorneys for Plaintiff
JOHN MOORE