

FILED

DEC 08 2011

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Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Fraguero, Deputy

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

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 THE CONTAINER STORE, INC.; and DOES  
19 1-150, inclusive,

20 Defendants.

Case No. CV 1105038

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

BY FAX

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 cases for CDs/DVDs sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about reproductive toxicity associated with their exposure to DEHP  
8 present in or on certain cases for CDs/DVDs that defendants manufacture, import, distribute,  
9 and/or offer for sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the cases for CDs/DVDs 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”), “[n]o person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and  
17 reasonable 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. Defendants manufacture, distribute, and/or offer sale of cases for CDs/DVDs  
24 containing excessive levels of DEHP including, but not limited to, *HIPCE Premium CD Wallet,*  
25 *CDHW-24, #10040968.* All such cases for CDs/DVDs containing DEHP shall hereinafter be  
26 referred to as the “PRODUCTS.”

27 7. Defendants’ failure to warn consumers and/or other individuals in the state of  
28 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*

1 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive  
2 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of  
3 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such  
4 conduct as well as civil penalties for each such violation.

5 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
6 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
7 PRODUCTS with the required warning regarding the health hazards of DEHP. (Cal. Health &  
8 Safety Code § 25249.7(a).)

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

11 **PARTIES**

12 10. Plaintiff, JOHN MOORE, is a citizen of the state of California who is dedicated to  
13 protecting the health of California citizens through the elimination or reduction of toxic  
14 exposures from consumer products; he brings this action in the public interest pursuant to  
15 California Health & Safety Code § 25249.7(d).

16 11. Defendant THE CONTAINER STORE, INC. ("CONTAINER STORE") is a  
17 person in the course of doing business within the meaning of California Health & Safety Code §  
18 25249.11.

19 12. Defendant CONTAINER STORE manufactures, distributes, and/or offers the  
20 PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
21 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of  
22 California.

23 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
24 persons in the course of doing business within the meaning of California Health & Safety Code  
25 § 25249.11.

26 14. MANUFACTURER DEFENDANTS engage in the process of researching,  
27 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
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1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
2 manufacturing, one or more of the PRODUCTS offered 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 name 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. CONTAINER STORE, 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 Marin County Superior Court, pursuant to Code of Civil  
24 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because  
25 one or more instances of wrongful conduct occurred, and continue to occur, in the County of  
26 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
27 County with respect to the PRODUCTS.

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

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

10          30.    The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
11 California by DEFENDANTS contained DEHP in an amount above the allowable state limits.

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

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

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

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

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

26          36.    DEFENDANTS failed to provide a "clear and reasonable warning" to those  
27 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/or ingestion during the reasonably foreseeable  
2 use of 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/or  
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  
7 suffer, irreparable harm for which 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  
18 alleged herein;

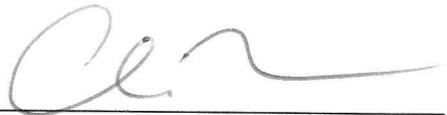
19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or  
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
22 warnings” as defined by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

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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: December 8, 2011

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Christopher M. Martin  
Attorneys for Plaintiff  
JOHN MOORE