

COPY

1 Christopher M. Martin, State Bar No. 186021
2 Josh Voorhees, State Bar No. 241436
3 Troy C. Bailey, State Bar No. 277424
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
7 JOHN MOORE

FILED

NOV 10 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

12 JOHN MOORE,

13 Plaintiff,

14 v.

16 INTERNATIONAL GREETINGS USA, INC.;
17 and DOES 1-150, inclusive,

18 Defendants.

Case No. Civ 1105578

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

21
22
23
24
25
26
27
28
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 luggage tags 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 luggage tags that defendants manufacture, import, distribute, and/or
9 offer for sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the ottomans that defendants
11 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

12 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the
14 course of doing business shall knowingly and intentionally expose any individual to a chemical
15 known to the state to cause cancer or reproductive toxicity without first giving clear and
16 reasonable warning to such individual ..." (Cal. Health & Safety Code, § 25249.6.)

17 5. On October 24, 2003, California identified and listed DEHP as a chemical known
18 to cause birth defects and other reproductive harm. DEHP became subject to the "clear and
19 reasonable warning" requirements of Proposition 65 one year later on October 24, 2004. (Tit.
20 27 Cal. Code Regs. ("CCR") § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
21 25249.10(b).)

22 6. Defendants manufacture, distribute, and/or offer sale of luggage tags containing
23 excessive levels of DEHP including, but not limited to, *Pepper Pot Luggage Tag, #05-5304 (#0*
24 *78228 17589 3)*. All such luggage tags containing DEHP shall hereinafter be referred to as the
25 "PRODUCTS."

26 7. Defendants' failure to warn consumers and/or other individuals in the state of
27 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
28 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive

1 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of
2 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
3 conduct as well as civil penalties for each such violation.

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

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

10 **PARTIES**

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

15 11. Defendant INTERNATIONAL GREETINGS USA, INC. ("INTERNATIONAL
16 GREETINGS") is a person in the course of doing business within the meaning of California
17 Health & Safety Code § 25249.11.

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

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

25 14. MANUFACTURER DEFENDANTS engage in the process of researching,
26 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
27 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
28 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

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 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,
5 or 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 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 the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *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 26. 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 27. On or about May 11, 2011, a sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to INTERNATIONAL GREETINGS and various
23 public enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the
24 PRODUCTS, purchasers and users in the state of California were being exposed to DEHP
25 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
26 purchasers and users first having been provided with a “clear and reasonable warning”
27 regarding such toxic exposures.

28

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 and/or inhalation during the
16 reasonably foreseeable 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 and/or inhalation.

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

27 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
28 consumers and/or other individuals in the state of California who were, or who could become

1 exposed to DEHP through dermal contact and/or ingestion and/or inhalation during the
2 reasonably foreseeable 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 and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS
6 sold by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue
7 to 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;

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: November 10, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 
Christopher M. Martin
Attorneys for Plaintiff
JOHN MOORE