

1 Josh Voorhees, State Bar No. 241436
2 Rachel S. Doughty, State Bar No. 255904
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 JOHN MOORE

SAN FRANCISCO COUNTY
2011 SEP 30 AM 1:09
BY: ELIACENTTI

11
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 LA REGALE LLC; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. **CGC-11-514765**

**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 clutches sold in California.

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

10 3. High levels of DEHP and DBP are commonly found in and on the clutches 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 Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual ...” (Health & Saf. 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. (Cal.
21 Code Regs. tit. 27, § 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)

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

27 7. Defendants manufacture, distribute, and/or offer for sale clutches containing
28 DEHP and DBP including, but not limited to, the *Faux Croco Clutch*, #25419 (#7 88374 02264

1 3). All such clutches containing either DEHP or DBP, or both DEHP and DBP shall hereinafter
2 be referred to as the "PRODUCTS."

3 8. Defendants' failure to warn consumers and/or other individuals in the state of
4 California not covered by California's Occupational Safety Health Act, Labor Code section
5 6300 *et seq.*, about their exposure to DEHP and/or DBP and the potential of these chemicals to
6 cause birth defects and other reproductive harm in conjunction with Defendants' distribution,
7 importation, manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and
8 subjects Defendants to enjoinder of such conduct as well as civil penalties for each such
9 violation.

10 9. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary
11 injunctive and permanent injunctive relief to compel Defendants to provide purchasers or users
12 of the PRODUCTS with the required warning regarding the health hazards of DEHP and DBP.
13 (Health & Saf. Code, § 25249.7, subd. (a).)

14 10. Plaintiff also seeks civil penalties against Defendants for their violations of
15 Proposition 65, as provided by Health & Safety Code section 25249.7, subdivision (b).

16 PARTIES

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

21 12. Defendant LA REGALE LLC ("LA REGALE") is a person in the course of doing
22 business within the meaning of Health & Safety Code section 25249.11.

23 13. Defendant LA REGALE manufactures, distributes, and/or offers the PRODUCTS
24 for sale or use in the state of California, or implies by its conduct that it manufactures,
25 distributes, and/or offers the PRODUCTS for sale or use in the state of California.

26 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
27 persons in the course of doing business within the meaning of Health & Safety Code section
28 25249.11.

1 the PRODUCTS for sale or use in violation of Health & Safety Code section 25249.6, and
2 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use
3 in violation of Health & Safety Code section 25249.6 has continued to occur beyond
4 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
5 believes that such violations will continue to 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 contained DEHP and/or DBP in amounts above the allowable
11 state limits.

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

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

17 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
18 continues to cause, consumer exposures to DEHP and/or DBP, as such exposure is defined by
19 California Code of Regulations title 27, section 25602, subdivision (b).

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

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

27 37. 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 and/or DBP through dermal contact and/or ingestion during the reasonably
2 foreseeable use of the PRODUCTS.

3 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
4 directly by California voters, individuals exposed to DEHP and/or DBP through dermal contact
5 and/or 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 39. 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 Health & Safety Code
10 section 25249.7, subdivision (b).

11 40. As a consequence of the above-described acts, Health & Safety Code
12 section 25249.7, subdivision (a) also specifically authorizes the Court to grant injunctive relief
13 against DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

16 1. That the Court, pursuant to Health & Safety Code section 25249.7, subdivision
17 (b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each
18 violation alleged herein;

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

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: September 30, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: *Rachel S. Doughty*
Rachel S. Doughty
Attorneys for Plaintiff
JOHN MOORE