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**ENDORSED
FILED**
San Francisco County Superior Court

AUG 11 2011

CLERK OF THE COURT
BY: PARAM NATT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

TRADE ASSOCIATES GROUP, LTD.; and
DOES 1-150, inclusive,

Defendants.

Case No. CGC-11-513304

**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 coverings for books sold by Defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failures to
7 warn California citizens about reproductive toxicity associated with their exposures to DEHP
8 present in or on certain coverings for books 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 coverings for books 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 for sale coverings for books
24 containing excessive levels of DEHP including, but not limited to, *Tag Notebook, 96 Pages,*
25 *#590231 (#0 25466 67357 5)*. All such coverings for books containing DEHP shall hereinafter
26 be referred to as “PRODUCTS.”

27 7. Defendants’ failures 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 exposures to DEHP and its potential to cause birth defects and other
2 reproductive harm in conjunction with Defendants' distribution, importation, manufacturing,
3 and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects Defendants to
4 enjoinder of such conduct as well as civil penalties (of up to \$2,500 per day) for each such
5 violation.

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

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

12 **PARTIES**

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

17 11. Defendant TRADE ASSOCIATES GROUP, LTD. ("TRADE ASSOCIATES") is
18 a person in the course of doing business within the meaning of California Health & Safety Code
19 § 25249.11.

20 12. Defendant TRADE ASSOCIATES manufactures, distributes, and/or offers the
21 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
22 manufactures, distributes, and/or offers PRODUCTS for sale or use in the State of 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 research, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more 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 PRODUCTS to individuals, businesses, or retailers for sale or use in the
8 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 PRODUCTS for sale to individuals in the State
13 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. TRADE ASSOCIATES, 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 Superior Court, pursuant to Code of Civil
24 Procedure Sections 394, 395, & 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 City
26 and County of San Francisco, and/or because DEFENDANTS conducted, and continue to
27 conduct, business in this County with respect to PRODUCTS.

1 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
3 DEFENDANTS' manufacture, distribution, and/or offering of PRODUCTS for sale or use in
4 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. 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 PRODUCTS manufactured,
13 distributed, and/or offered for sale or use in California contained DEHP.

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

17 33. The normal and reasonably foreseeable use of 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 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 PRODUCTS would occur by their deliberate, non-accidental participation in
24 the manufacture, distribution, and/or offering of PRODUCTS for sale or use to individuals in
25 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, and each of them, as
16 follows:

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

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

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

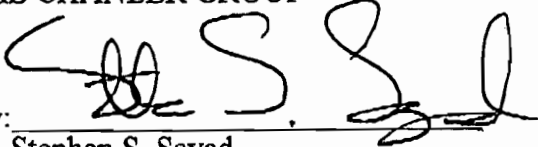
25 4. That the Court grant such other and further relief as may be just and proper.
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Dated: August 11, 2011

Respectfully submitted,

THE CHANLER GROUP

By: 

Stephen S. Sayad
Attorneys for Plaintiff
JOHN MOORE