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ENDORSED
FILED
ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By DOLORES J. SILVA
Deputy

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

11 JOHN MOORE,
12 Plaintiff,
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14 v.
15 CM INTERNATIONAL, INC.; CMC
16 WORLDWIDE, INC.; and DOES 1-150,
17 inclusive.
18 Defendants.
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Case No. RG 11-595381

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**
(Cal. Health & Safety Code § 25249.6 et seq.)

BY FAX

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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff John Moore, in the
3 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, a toxic chemical, found in furniture sold
5 in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to di(2-ethylhexyl)phthalate present in or on
8 certain furniture that defendants manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on furniture
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 di(2-ethylhexyl)phthalate as
19 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)
20 phthalate became subject to the warning requirement one year later and was therefore subject to
21 the “clear and reasonable warning” requirements of Proposition 65, beginning on October 24,
22 2004. (*27 CCR § 27001 (c); Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall be referred to hereinafter as the “LISTED
24 CHEMICAL.”

25 7. Defendants manufacture, distribute, and/or sell furniture containing excessive
26 levels of the LISTED CHEMICAL including, but not limited to, the *Taylor Kid’s Chair, #7008-*
27 *ESP (#7 84082 08834 6)*. All such furniture containing the LISTED CHEMICAL shall
28 hereinafter be referred to as the “PRODUCTS.”

1 31. On or about February 28, 2012, plaintiff served a supplemental sixty-day notice of
2 violation together with the requisite certificate of merit on CM INTERNATIONAL, CMC
3 WORLDWIDE, and various public enforcement agencies which included the additional
4 allegation that CMC WORLDWIDE was also responsible for purchasers' and users' exposed to
5 DEHP during the reasonably foreseeable use of the PRODUCTS resulting from DEFENDANTS'
6 unwarned sales of the PRODUCTS in California.

7 32. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
8 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
9 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
10 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
11 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation and supplemental sixty-day
12 notice of violation. Plaintiff further alleges and believes that such violations will continue to
13 occur into the future.

14 33. After receipt of the claims asserted in the sixty-day notice of violation and
15 supplemental sixty-day notice of violation, the appropriate public enforcement agencies have
16 failed to commence and diligently prosecute a cause of action against DEFENDANTS under
17 Proposition 65.

18 34. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
19 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
20 limits.

21 35. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
22 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
23 LISTED CHEMICAL.

24 36. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
25 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
26 and/or inhalation during the reasonably foreseeable use of the PRODUCTS.

1 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
3 defined by 27 CCR § 25602(b).

4 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
5 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
6 and/or ingestion and/or inhalation.

7 39. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
8 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
9 accidental participation in the manufacture, distribution and/or offer for sale or use of
10 PRODUCTS to individuals in the State of California.

11 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and/or other individuals in the State of California who were or who could become
13 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion and/or inhalation
14 during the reasonably foreseeable use of the PRODUCTS.

15 41. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
16 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
17 contact and/or ingestion and/or inhalation resulting from the reasonably foreseeable use of the
18 PRODUCTS, sold by DEFENDANTS without a “clear and reasonable warning,” have suffered,
19 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate
20 remedy at law.

21 42. As a consequence of the above-described acts, DEFENDANTS are liable for a
22 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
23 Safety Code § 25249.7(b).

24 43. As a consequence of the above-described acts, California Health & Safety Code
25 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
26 DEFENDANTS.

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