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**ENDORSED  
FILED  
ALAMEDA COUNTY**

OCT 04 2011

CLERK OF THE SUPERIOR COURT  
By Tasha Perry, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

11  
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 SENTRY INDUSTRIES, INC.; and DOES 1-  
16 150, inclusive,

17 Defendants.

Case No. RG 115983 15

**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”), a toxic chemical found in  
5 cases for CDs/DVDs and watches sold in California, and di-n-butyl phthalate (“DBP”), a toxic  
6 chemical found in cases for CDs/DVDs sold in California.

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

13 3. High levels of DEHP and/or DBP are commonly found in and on the cases for  
14 CDs/DVDs that defendants manufacture, distribute, and/or offer for sale to consumers  
15 throughout the state of California. High levels of DEHP are commonly found in and on the  
16 watches that defendants manufacture, distribute, and/or offer for sale to consumers throughout  
17 the state of California.

18 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
19 California Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the  
20 course of doing business shall knowingly and intentionally expose any individual to a chemical  
21 known to the state to cause cancer or reproductive toxicity without first giving clear and  
22 reasonable warning to such individual ...” (Health & Saf. Code, § 25249.6.) This complaint  
23 alleges a failure to warn with respect to “reproductive toxicity.”

24 5. On October 24, 2003, California identified and listed DEHP as a chemical known  
25 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and  
26 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Cal.  
27 Code Regs., tit. 27, § 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)  
28

1           6.     On December 2, 2005, California identified and listed DBP as a chemical known  
2 to cause birth defects and other reproductive harm. DBP became subject to the warning  
3 requirement one year later and was, therefore, subject to the “clear and reasonable warning”  
4 requirements of Proposition 65, beginning on December 2, 2006. (Cal. Code Regs., tit. 27, §  
5 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)

6           7.     Defendants manufacture, distribute, and/or sell cases for CDs/DVDs and watches  
7 containing the DEHP and/or DBP as follows:

8           a.     Defendants manufacture, distribute, and/or offer for sale cases for  
9 CDs/DVDs containing DBP including, but not limited to, the *Sentry 36 Disc Capacity*  
10 *CD/DVD Wallet, CD036-NU (#0 80068 50036 0)*.

11           b.     Defendants manufacture, distribute, and/or offer for sale cases for  
12 CDs/DVDs containing DEHP including, but not limited to, the *Sentry 36 Disc Capacity*  
13 *CD/DVD Wallet, CD036-NU (#0 80068 50036 0)*, the *Sentry 96 Disc Capacity CD/DVD*  
14 *Wallet, CD096-NU (#0 80068 50096 4)*, and the *Sentry 208 Disc Capacity CD/DVD*  
15 *Wallet, CD200-NU (#0 80068 50200 5)*.

16           c.     Defendants manufacture, distribute, and/or offer for sale watches  
17 containing DEHP including, but not limited to, the *Sentry Calculator Bonus Pack with*  
18 *Watch, CA339 (#0 80068 20339 1)*.

19           8.     All such cases for CDs/DVDs containing either DEHP or DBP, or both, listed  
20 above in paragraph 7(a) – (b) shall hereinafter be referred to as the “CASE PRODUCTS.” All  
21 such watches containing DEHP, described above in paragraph 7(c) shall hereinafter be referred  
22 to as the “WATCH PRODUCTS.” Collectively the CASE PRODUCTS and the WATCH  
23 PRODUCTS may be referred to as the “PRODUCTS.”

24           9.     Defendants’ failure to warn consumers and/or other individuals in the state of  
25 California not covered by California’s Occupational Safety Health Act, Labor Code section  
26 6300 *et seq.*, about their exposure to DEHP and/or DBP and the potential of that exposure to  
27 cause birth defects and other reproductive harm in conjunction with Defendants’ distribution,  
28 importation, manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and

1 subjects Defendants to enjoinder of such conduct as well as civil penalties for each such  
2 violation.

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

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

9 **PARTIES**

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

14 13. Defendant SENTRY INDUSTRIES, INC. ("SENTRY") is a person in the course  
15 of doing business within the meaning of Health & Safety Code section 25249.11.

16 14. Defendant SENTRY manufactures, distributes, and/or offers the PRODUCTS for  
17 sale or use in the state of California, or implies by its conduct that it manufactures, distributes,  
18 and/or offers the PRODUCTS for sale or use in the state of California.

19 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
20 persons in the course of doing business within the meaning of Health & Safety Code section  
21 25249.11.

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

26 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
27 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

28 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or

1 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
2 in the state of California.

3 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
4 the course of doing business within the meaning of Health & Safety Code section 25249.11.

5 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
6 state of California.

7 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
8 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
9 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
10 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
11 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

12 22. SENTRY, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
13 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
14 referred to as “DEFENDANTS.”

15 **VENUE AND JURISDICTION**

16 23. Venue is proper in the Alameda County Superior Court pursuant to Code of Civil  
17 Procedure sections 394, 395, & 395.5, because this Court is a court of competent jurisdiction,  
18 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
19 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
20 County with respect to the PRODUCTS.

21 24. The California Superior Court has jurisdiction over this action pursuant to  
22 California Constitution article VI, section 10, which grants the Superior Court “original  
23 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
24 which this action is brought does not specify any other basis of subject matter jurisdiction.

25 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
26 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,  
27 or association that is a citizen of the state of California, has sufficient minimum contacts in the  
28 state of California, or otherwise purposefully avails itself of the California market.

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 - Against All Defendants)**

5 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
6 Paragraphs 1 through 25, inclusive.

7 27. The citizens of the state of California have stated expressly in Proposition 65 that  
8 they must be informed "about exposures to chemicals that cause cancer, birth defects and other  
9 reproductive harm." (Health & Saf. Code, § 25249.6.)

10 28. Proposition 65 states, "[n]o person in the course of doing business shall  
11 knowingly and intentionally expose any individual to a chemical known to the state to cause  
12 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
13 individual...." (*Id.*)

14 29. On or about March 17, 2011, a sixty-day notice of violation, together with the  
15 requisite certificate of merit, was provided to SENTRY and various public enforcement  
16 agencies stating that, as a result of the DEFENDANTS' sales of the cases for CDs/DVDs,  
17 purchasers and users in the state of California were exposed to DEHP resulting from the  
18 reasonably foreseeable use of the cases for CDs/DVDs, without the individual purchasers and  
19 users first having received a "clear and reasonable warning" regarding such toxic exposures.

20 30. On or about July 20, 2011, a supplemental sixty-day notice of violation, together  
21 with the requisite certificate of merit, was provided to SENTRY and various public enforcement  
22 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers  
23 and users in the state of California were exposed to DEHP and/or DBP, as set forth in the  
24 supplemental notice, resulting from the reasonably foreseeable use of the PRODUCTS, without  
25 the individual purchasers and users first having received a "clear and reasonable warning"  
26 regarding such toxic exposures.

27 31. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
28 the PRODUCTS for sale or use in violation of Health & Safety Code section 25249.6, and

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

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

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

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

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

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

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

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

26 39. 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,  
28

1 exposed to DEHP and/or DBP through dermal contact and/or ingestion during the reasonably  
2 foreseeable use of the PRODUCTS.

3 40. 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 41. 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 42. 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 (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 California Code of Regulations title 27, section 25601 as to the harms  
23 associated with exposure to DEHP;

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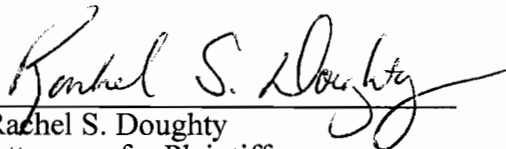


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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: October 3, 2011

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Rachel S. Doughty  
Attorneys for Plaintiff  
JOHN MOORE