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**FILED**

**NOV 16 2011**

**KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT**

*By: S. Bond, Deputy*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 EXCLUSIVE IMPORTS, INC.; and DOES 1-  
19 150, inclusive,

20 Defendants.

Case No. CW 1105660

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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**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 ID  
5 cases 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 ID cases that defendants manufacture, import, distribute, and/or offer for  
9 sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the ID cases 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 ID cases containing  
23 excessive levels of DEHP including, but not limited to, *Baumgarten’s Horizontal Badge*  
24 *Holder, #67810 (#0 85288 67810 3)*. All such ID cases containing DEHP shall hereinafter be  
25 referred to as the “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 EXCLUSIVE IMPORTS, INC. ("EXCLUSIVE IMPORTS") is a  
16 person in the course of doing business within the meaning of California Health & Safety Code §  
17 25249.11.

18 12. Defendant EXCLUSIVE IMPORTS manufactures, distributes, and/or offers the  
19 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 September 1, 2011, a sixty-day notice of violation, together with the  
22 requisite certificate of merit, was provided to EXCLUSIVE IMPORTS and various public  
23 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS,  
24 purchasers and users in the state of California were being exposed to DEHP resulting from the  
25 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
26 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

5 29. After receipt of the claims asserted in the sixty-day notice 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 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
9 California by DEFENDANTS contained DEHP in an amount above the allowable state limits.

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

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

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
16 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR  
17 § 25602(b).

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

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

24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
25 consumers and/or other individuals in the state of California who were, or who could become  
26 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable  
27 use of the PRODUCTS.

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