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

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 PAN AM RAILWAYS, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

21 Case No. CIV 1105657

22 **COMPLAINT FOR CIVIL PENALTIES
23 AND INJUNCTIVE RELIEF**

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

FILED

NOV 16 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: K. Main, Deputy

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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
5 passport covers and luggage tags 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 passport covers and luggage tags that defendants manufacture, import,
9 distribute, 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 passport covers and
11 luggage tags that defendants manufacture, distribute, and/or offer for sale to consumers
12 throughout the state of 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 passport covers
24 containing excessive levels of DEHP including, but not limited to, *Originals – Passport Cover,*
25 *#37SP08FB/VW.*

26 7. Defendants manufacture, distribute, and/or offer for sale luggage tags containing
27 excessive levels of DEHP including, but not limited to, *Originals - Luggage Tag,*
28 *#36SP10PAB/VW.*

1 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 County with respect to the PRODUCTS.

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

7 25. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
9 or association that is a citizen of the state of California, has sufficient minimum contacts in the
10 state of California, or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

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

17 27. The citizens of the state of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*
19 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
20 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

21 28. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual....” (*Ibid.*)

25 29. On or about September 1, 2011, a sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to PAN AM and various public enforcement
27 agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers
28 and users in the state of California were being exposed to DEHP resulting from the reasonably

1 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
2 been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

9 31. After receipt of the claims asserted in the sixty-day notice of violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a
11 cause of action against DEFENDANTS under Proposition 65.

12 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained DEHP in an amount above the allowable state limits.

14 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
15 distributed, and/or offered for sale or use in California contained DEHP.

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

19 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
21 § 25602(b).

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

24 37. DEFENDANTS intended that such exposures to DEHP from the reasonably
25 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
26 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
27 individuals in the state of California.
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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: November __, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: _____
Christopher M. Martin
Attorneys for Plaintiff
JOHN MOORE