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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Main, Deputy

5 Attorneys for Plaintiff
6 JOHN MOORE

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,
12 Plaintiff,
13 v.
14 FKA DISTRIBUTING CO.; HOMEDICS-
U.S.A., INC.; and DOES 1-150, inclusive,
15 Defendants.

Case No. CIV 1200888

**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”) and Di-n-butyl Phthalate
5 (“DBP”), toxic chemicals found in cases with zipper pulls sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about their exposure to DEHP and DBP, present in or on certain cases with
8 zipper pulls that defendants manufacture, import, distribute, sell, and/or offer for sale to
9 consumers and businesses throughout the State of California.

10 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course
12 of doing business shall knowingly and intentionally expose any individual to a chemical known
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code §§ 25249.8 & 25249.10(b).*)

20 5. On December 2, 2005, California identified and listed DBP as a chemical known
21 to cause birth defects and other reproductive harm. DBP became subject to the warning
22 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
23 requirements of Proposition 65, beginning on December 2, 2006. (*27 CCR § 27001 (c); Cal.*
24 *Health & Safety Code §§ 25249.8 & 25249.10(b).*)

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1 14. HOMEDICS is a person doing business within the meaning of California Health &
2 Safety Code § 25249.11.

3 15. HOMEDICS manufactures, imports, distributes, sells and/or offers the
4 PRODUCTS for sale or use in the State of California or implies by its conduct that it
5 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State
6 of California.

7 16. Defendant DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
8 doing business within the meaning of California Health & Safety Code § 25249.11.

9 17. MANUFACTURER DEFENDANTS engage in the process of research, testing,
10 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
11 engage in the process of research, testing, designing, assembling, fabricating, and/or
12 manufacturing one or more of the PRODUCTS for sale or use in the State of California.

13 18. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
14 doing business within the meaning of California Health & Safety Code § 25249.11.

15 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
16 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
17 the State of California.

18 20. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
19 doing business within the meaning of California Health & Safety Code § 25249.11.

20 21. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
21 State of California and, in some circumstances, may also be manufacturers and/or distributors.

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

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1 29. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
2 and intentionally expose any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warning to such individual....”

4 (*Id.*)

5 30. On or about September 19, 2011, a 60-Day Notice of Violation, together with the
6 requisite Certificate of Merit (the “Notice”), was provided to FKA, HOMEDICS and various
7 public enforcement agencies stating that as a result of Defendants’ manufacture, importation,
8 distribution and/or sale of the PRODUCTS, purchasers and users in the State of California were
9 being exposed to DEHP and DBP resulting from the reasonably foreseeable uses of the
10 PRODUCTS, without the individual purchasers and users first having been provided with a
11 “clear and reasonable warning” regarding such toxic exposures.

12 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale
13 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
14 Code § 25249.6 and DEFENDANTS’ manufacture, importation, distribution, sale and/or
15 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
16 § 25249.6 has continued to occur beyond Defendants’ receipt of the Notice. Plaintiff further
17 alleges and believes that such violations will continue to occur into the future.

18 32. After receipt of the claims asserted in the Notice, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action against
20 DEFENDANTS under Proposition 65.

21 33. The PRODUCTS manufactured, imported, distributed, sold and/or offered for sale
22 or use in California by DEFENDANTS contained DEHP and DBP above the allowable state
23 limits.

24 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
25 imported, distributed, sold and/or offered for sale or use by DEFENDANTS in California
26 contained DEHP and DBP.

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1 35. DEHP and DBP were present in or on the PRODUCTS in such a way as to expose
2 individuals to DEHP and DBP through dermal contact and/or ingestion during the reasonably
3 foreseeable use of the PRODUCTS.

4 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
5 continues to cause consumer and workplace exposures to DEHP and DBP, as such exposure is
6 defined by 27 California Code of Regulations (“CCR”) § 25602(b).

7 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS would expose individuals to DEHP and DBP through dermal contact and
9 ingestion.

10 38. DEFENDANTS intended that such exposures to DEHP and DBP from the
11 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
12 participation in the manufacture, importation, distribution, sale and/or offer for sale or use of
13 PRODUCTS to individuals in the State of California.

14 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and/or other individuals in the State of California who were or who could become
16 exposed to DEHP and DBP through dermal contact and ingestion during the reasonably
17 foreseeable use of the PRODUCTS.

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

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

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