

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

6 Attorneys for Plaintiff
7 JOHN MOORE

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

11 JOHN MOORE,
12 Plaintiff,
13 v.

14 THE COLMAN GROUP, INC.; and DOES 1-
15 150, inclusive,
16 Defendants.

) Case No. CIV 1201089
) BY FAX
) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
)
) (*Cal. Health & Safety Code § 25249.6 et seq.*)

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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 aprons sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failures to
7 warn California citizens about their exposure to DEHP present in or on certain aprons that
8 defendant manufactures, imports, distributes, and/or offers for sale to consumers throughout the
9 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 Cal. Code Regs. ("CCR")*
19 *§ 27001 (c); Cal. Health & Safety Code § 25249.8.*)

20 5. Defendant THE COLMAN GROUP, INC. ("COLMAN" or "Defendant")
21 manufactures, imports, distributes, and/or sells aprons containing DEHP including, but not
22 limited to, *CrewWare Protective Bib Apron, Item: 614DVA-WH8 (#7 24215 00916 9)*.

23 6. All such aprons containing DEHP shall hereinafter be collectively referred to as
24 the "PRODUCTS".

25 7. Defendant's failure to warn consumers and/or other individuals in the State of
26 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to DEHP in conjunction with Defendant's distribution, importation,
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1 manufacture, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
2 Defendant to enjoinder of such conduct as well as civil penalties for each such violation.

3 8. For Defendant's violations of Proposition 65, plaintiff seeks preliminary
4 injunctive and permanent injunctive relief to compel Defendant to provide purchasers or users of
5 the PRODUCTS with the required warning regarding the health hazards of DEHP. (*Cal. Health*
6 *& Safety Code § 25249.7(a).*)

7 9. Plaintiff also seeks civil penalties against Defendant for its violations of
8 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 10. 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 commercial products, and brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7.

14 11. Defendant THE COLMAN GROUP, INC. is a person doing business within the
15 meaning of California Health & Safety Code § 25249.11.

16 12. Defendant COLMAN manufactures, imports, distributes, and/or offers the
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it
18 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
19 California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons doing business within the meaning of California Health & Safety Code § 25249.11.

22 14. 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 for sale or use in the State of California.

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code § 25249.11.

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1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65 – Against All Defendants)**

7 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 23, inclusive.

9 25. The citizens of the State of California have expressly stated in Proposition 65 that
10 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
11 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

12 26. Proposition 65 states, “No person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual....”
15 (*Id.*)

16 27. On or about November 17, 2011, a 60-Day Notice of Violation, together with the
17 requisite Certificate of Merit (the “Notice”), was provided to COLMAN and various public
18 enforcement agencies stating that as a result of COLMAN's sales of the PRODUCTS, purchasers
19 and users in the State of California were being exposed to DEHP resulting from the reasonably
20 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
21 been provided with a “clear and reasonable warning” regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, importation, distribution,
23 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
24 Code § 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of
25 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
26 continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of Violation.
27 Plaintiff further alleges and believes that such violations will continue to occur into the future.

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1 29. After receipt of the claims asserted in the Notice, the appropriate public
2 enforcement agencies have failed to commence and diligently prosecute a cause of action against
3 DEFENDANTS under Proposition 65.

4 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
5 use in California by DEFENDANTS contained DEHP above the allowable state limits.

6 31. Defendants knew or should have known that the PRODUCTS manufactured,
7 imported, distributed, and/or offered for sale or use by Defendants in California contained
8 DEHP.

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

12 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
13 continues to cause consumer exposures to DEHP, as such exposure is defined by 27 CCR
14 § 25602(b).

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

17 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
18 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
19 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
20 individuals in the State of California.

21 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
22 consumers and/or other individuals in the State of California who were or who could become
23 exposed to DEHP through ingestion and/or dermal contact during the reasonably foreseeable use
24 of the PRODUCTS.

25 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
26 directly by California voters, individuals exposed to DEHP through ingestion and/or dermal
27 contact resulting from the reasonably foreseeable use of the PRODUCTS, sold by
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1 DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer,
2 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

6 39. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

11 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
12 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
13 alleged herein;

14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or
16 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
17 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;

18 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

19 4. That the Court grants such other and further relief as may be just and proper.

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21 Dated: February 29, 2012

Respectfully Submitted,

22 THE CHANLER GROUP

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24 By: 

25 Troy C. Bailey
26 Attorneys for Plaintiff
27 JOHN MOORE
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