

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Brian C. Johnson, State Bar No. 235965
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED
ALAMEDA COUNTY
FEB 09 2012
CLERK OF THE SUPERIOR COURT

Anita Dhir

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

SLAM BRANDS, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No: **RG12616502**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of
2 such conduct as well as civil penalties for each such violation.

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

7 9. Plaintiff also seeks civil penalties against defendants for their violations of
8 Proposition 65, as provided 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 consumer products; he brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7(d).

14 11. Defendant, SLAM BRANDS, INC. ("SLAM BRANDS"), is a person in the
15 course of doing business within the meaning of California Health & Safety Code §§ 25249.6 &
16 25249.11.

17 12. Defendant SLAM BRANDS manufactures, distributes, and/or offers the
18 PRODUCTS for sale or use in the state of California, or implies by its conduct that it
19 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are persons in
21 the course of doing business within the meaning of California Health & Safety Code §§ 25249.6
22 & 25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
24 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
25 engage in the process of research, testing, designing, assembling, fabricating, and/or
26 manufacturing, one or more of the PRODUCTS 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 or
5 association that is a citizen of the state of California, has sufficient minimum contacts in the state
6 of California, or otherwise purposefully avails itself of the California market. DEFENDANTS’
7 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
8 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 Proposition 65 that
14 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
15 reproductive harm.” (Cal. Health & Safety Code § 25249.6.)

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

20 27. On or about November 22, 2011, plaintiff served a sixty-day notice of violation,
21 together with the requisite certificate of merit, on SLAM BRANDS and various public
22 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS,
23 purchasers and users in the state of California were being exposed to the LISTED CHEMICAL
24 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
25 purchasers and users first having been provided with a “clear and reasonable warning” regarding
26 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' violations have continued beyond DEFENDANTS' receipt of plaintiff's sixty-
2 day notice, such violations are ongoing and continuous in nature.

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

6 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the level at
8 which a warning is required pursuant to Proposition 65.

9 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or offered for sale or use by DEFENDANTS in California contain the LISTED
11 CHEMICAL.

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

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
17 by Tit. 27 Cal. Code Regs. § 25602(b).

18 34. DEFENDANTS knew and continue to know that the normal and reasonably
19 foreseeable use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through
20 dermal contact and/or ingestion.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: February 8, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian Johnson
Attorneys for Plaintiff
JOHN MOORE