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Denise H. Yarnes, Clerk of the Superior Court  
County of Santa Clara, California

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA CLARA  
10 UNLIMITED CIVIL JURISDICTION  
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12 JOHN MOORE,  
13 Plaintiff,

14 v.

15 CROSCILL HOME LLC; and DOES 1-150,  
16 inclusive,  
17 Defendants.

) Case No.

112CV227498

) COMPLAINT FOR CIVIL PENALTIES  
) AND INJUNCTIVE RELIEF

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

BY FAX

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David H. Norton's Case of the Superior Court

**NATURE OF THE ACTION**

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1. This Complaint is a representative action brought by plaintiff John Moore, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in curtains sold in California.

2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn California citizens about their exposure to DEHP, present in or on certain curtains that defendant manufactures, imports, distributes, and/or offers for sale to consumers throughout the State of California.

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

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

5. Defendant manufactures, imports, distributes, and/or sells curtains containing DEHP including, but not limited to, *Chapel Hill West End Tab Top Panel, Style No. 5HO-336AO-9883, PN 99319F (#7 62416 07681 8)*, hereinafter collectively referred to as the "Products."

6. Defendant's failure to warn consumers and/or other individuals in the State of California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq.* about their exposure to DEHP in conjunction with defendant's distribution, importation,

1 manufacture, and/or sale of the Products is a violation of Proposition 65 and subjects defendant  
2 to enjoinder of such conduct as well as civil penalties for each such violation.

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

7 8. 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 9. John Moore is a citizen of the State of California who is dedicated to protecting  
11 the health of California citizens through the elimination or reduction of toxic exposures from  
12 consumer and commercial products, and brings this action in the public interest pursuant to  
13 California Health & Safety Code § 25249.7.

14 10. Defendant Croscill Home LLC ("Croscill") is a person doing business within the  
15 meaning of California Health & Safety Code § 25249.11.

16 11. Croscill manufactures, imports, distributes, and/or offers the Products for sale or  
17 use in the State of California or implies by its conduct that it manufactures, imports, distributes,  
18 and/or offers the Products for sale or use in the State of California.

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

21 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
22 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
23 engage in the process of research, testing, designing, assembling, fabricating, and/or  
24 manufacturing, one or more of the Products for sale or use in the State of California.

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

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1         15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
2 transport one or more of the Products to individuals, businesses, or retailers for sale or use in the  
3 State of California.

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

6         17. RETAILER DEFENDANTS offer the Products for sale to individuals in the State  
7 of California and, in some circumstances, may also be manufacturers and/or distributors.

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

13         19. CROSCILL, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
14 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
15 referred to hereinafter as “DEFENDANTS.”

16                                 **VENUE AND JURISDICTION**

17         20. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of  
18 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,  
19 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
20 County of Santa Clara, and/or because DEFENDANTS conducted, and continue to conduct,  
21 business in this County with respect to the Products.

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

26         22. The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
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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 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
8 Paragraphs 1 through 22, inclusive.

9 24. 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 25. Proposition 65 states, "[n]o 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 26. On December 13, 2011, a 60-Day Notice of Violation, together with the requisite  
17 Certificate of Merit (the "Notice"), was provided to Croscill and various public enforcement  
18 agencies stating that as a result of DEFENDANTS' manufacture, importation, distribution and/or  
19 sale of the Products, purchasers and users in the State of California were being exposed to DEHP  
20 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers  
21 and users first having been provided with a "clear and reasonable warning" regarding such toxic  
22 exposures.

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

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

6 29. The Products manufactured, imported, distributed, and/or offered for sale or use in  
7 California by DEFENDANTS contained DEHP above the allowable state limits.

8 30. DEFENDANTS knew or should have known that the Products manufactured,  
9 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained  
10 DEHP.

11 31. DEHP was present in or on the Products in such a way as to expose individuals to  
12 DEHP through inhalation, dermal contact and ingestion during the reasonably foreseeable use of  
13 the Products.

14 32. The normal and reasonably foreseeable use of the Products has caused and  
15 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
16 27 California Code of Regulations ("CCR") § 25602(b).

17 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
18 the Products would expose individuals to DEHP through inhalation, dermal contact and  
19 ingestion.

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

24 35. 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 inhalation, dermal contact and ingestion during the reasonably  
27 foreseeable use of the Products.

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

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

9           38.    As a consequence of the above-described acts, California Health & Safety Code  
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
11 DEFENDANTS.

12   **PRAYER FOR RELIEF**

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

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

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


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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: June 28, 2012

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Harris A. Weinstein  
Attorneys for Plaintiff  
JOHN MOORE