

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
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

9 Attorneys for Plaintiff
10 JOHN MOORE

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 SANTA CLARA COUNTY
14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 NEWS CORPORATION;
19 HARPERCOLLINS PUBLISHERS L.L.C.;
20 and DOES 1-150, inclusive,

21 Defendants.

22 **112 CV 226580**
23 Case No. _____

24 **COMPLAINT FOR CIVIL PENALTIES
25 AND INJUNCTIVE RELIEF**

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

27 ENDORSED

28 2012 JUN 15 A 11:11

ENDOR

2012 JUN 15 4

Deputy Clerk, Clerk of the Superior Court
County of Santa Clara, California

By: _____

Deputy Clerk

D. Mendel

Deputy Clerk, Clerk of the Superior Court
County of Santa Clara, California

Dep

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 books with vinyl covers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on the books with
8 vinyl covers manufactured, distributed, and/or offered for sale or use to consumers throughout
9 the state of California.

10 3. High levels of DEHP are commonly found in and on the books with vinyl covers
11 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the state
12 of California.

13 4. Under The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
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 pursuant to
19 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
20 became subject to the “clear and reasonable warning” requirements of the Act one year later on
21 October 24, 2004. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health & Safety Code §§ 25249.8
22 & 25249.10(b).) DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and/or sell books with vinyl covers that
24 contain excessive levels of DEHP, including, but not limited to, the *Collins Latin Dictionary*,
25 ISBN 978-0-00-470763-1. All such books with vinyl covers containing DEHP are referred to
26 collectively hereinafter as “PRODUCTS.”
27
28

1 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
2 persons in the course of doing business within the meaning of California Health & Safety Code
3 § 25249.11.

4 16. MANUFACTURER DEFENDANTS engage in the process of researching,
5 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
6 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
7 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.

8 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
9 in the course of doing business within the meaning of California Health & Safety Code
10 § 25249.11.

11 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
13 in the state of California.

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

17 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 state of California.

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

24 22. NEWS, HCP, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”
27
28

1 VENUE AND JURISDICTION

2 23. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of
3 Civil Procedure §§ 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred and continue to occur in Santa
5 Clara County, and/or because DEFENDANTS conducted and continue to conduct business in
6 this county with respect to the PRODUCTS.

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

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

17 FIRST CAUSE OF ACTION

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

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

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

25 28. Proposition 65 states, “[n]o person in the course of doing business shall
26 knowingly and intentionally expose any individual to a chemical known to the state to cause
27
28

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual ...” (*Id.*)

3 29. On or about March 8, 2012, plaintiff’s sixty-day notice of violation, together with
4 the requisite certificate of merit, was provided to NEWS, HCP and certain requisite public
5 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS
6 containing the LISTED CHEMICAL, purchasers and users in the state of California were being
7 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable use of the
8 PRODUCTS, without the individual purchasers and users first having been provided with a
9 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

10 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
11 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
12 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
13 notice of violation. Plaintiff further alleges that DEFENDANTS’ violations are ongoing and
14 continuous in nature and, as such, will continue to occur in the future.

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

18 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
19 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
20 allowable state limits, such that they require a “clear and reasonable” Proposition 65 warning.

21 33. DEFENDANTS knew or should have known that the PRODUCTS they
22 manufactured, distributed, and/or offered for sale or use in California contain the LISTED
23 CHEMICAL.

24 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
25 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.
26
27
28

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

4 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
6 offering the PRODUCTS for sale or use in California without first providing “clear and
7 reasonable warnings” as defined by Cal. Code Regs., tit. 27, § 25601, as to the harms associated
8 with exposure the LISTED CHEMICAL;

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

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

11 Dated: June 14, 2012

12 Respectfully Submitted,
13 THE CHANLER GROUP

14 By: 

15 Brian C. Johnson
16 Attorneys for Plaintiff
17 JOHN MOORE