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David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: _____ Deputy Clerk

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12 RUSSELL BRIMER, PETER ENGLANDER AND
13 JOHN MOORE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER; PETER ENGLANDER;
14 and JOHN MOORE

15 Plaintiffs,

16 v.

17 3M COMPANY; AWI ACQUISITION
18 COMPANY; BELLOTA US CORP.;
19 CORONA CLIPPER, INC.; D.W.L.
20 INTERNATIONAL TRADING INC.;
21 GENERAL CAGE, LLC; GREAT NECK SAW
22 MANUFACTURERS, INC.; IRWIN
23 INDUSTRIAL TOOL COMPANY; M & Y
24 TRADING CORP. D/B/A HELBY IMPORT
25 COMPANY; MASCO CORPORATION;
26 NEWELL RUBBERMAID INC.; PANACEA
27 PRODUCTS CORPORATION; THE
28 FAUCET-QUEENS, INC.; ULLMAN
DEVICES CORPORATION; VOXX
ACCESSORIES CORPORATION; WIRE
AND CABLE SPECIALTIES, INC.;
WOODSTREAM CORPORATION; and DOES
1-150, inclusive,

Defendants.

Case No. **112CV231165**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

By Fax

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiffs JOHN MOORE,
3 RUSSELL BRIMER and PETER ENGLANDER in the public interest of the citizens of the State
4 of California, to enforce the People’s right to be informed of the presence of di(2-
5 ethylhexyl)phthalate (“DEHP”) and lead, chemicals found in consumer products sold in
6 California.

7 2. By this Complaint, plaintiffs seek to remedy defendants’ continuing failures to
8 warn California citizens about their exposure to DEHP and lead, present in or on certain hand
9 tools and/or kitchen tools, that defendants manufacture, import, distribute and/or offer for sale to
10 consumers throughout the State of California.

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

16 4. On February 27, 1987, California identified and listed lead as a chemical known to
17 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
18 one year later and was therefore subject to the “clear and reasonable warning” requirements of
19 Proposition 65, beginning on February 27, 1988. (Title 27 of the California Code of Regulation
20 (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8. & 25249.10(b).)

21 5. On October 23, 2003, California identified and listed DEHP as a chemical known
22 to cause birth defects and other reproductive harm. DEHP became subject to the warning
23 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
24 requirements of Proposition 65, beginning on October 23, 2004. (27 CCR § 27001 (c); Cal.
25 Health & Safety Code § 25249.8. & 25249.10(b).)

26 6. Defendants manufacture, import, distribute, and/or sell hand tools and/or kitchen
27 tools containing DEHP and/or lead as follows:
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- 1 a. Defendant 3M COMPANY manufactures, imports, distributes,
2 and/or sells hand tool grips containing lead including, but not limited to 3M
3 *Bondo Pick & Hammer, No. 107* (#0 76308 00107 0);
- 4 b. Defendant AWI ACQUISITION COMPANY manufactures,
5 imports, distributes, and/or sells tools with grips containing DEHP including, but
6 not limited to, *Allied Junior Trucker Tool Set, Model 69091* (#0 35794 69091 5);
- 7 c. Defendants BELLOTA US CORP. and CORONA CLIPPER, INC.
8 manufacture, import, distribute, and/or sell hand tool grips containing DEHP
9 including, but not limited to, *Corona Bypass Pruner, BP 3160* (#0 38313 00060
10 8);
- 11 d. Defendant MASCO CORPORATION manufactures, imports,
12 distributes, and/or sells hand tool grips containing DEHP including, but not
13 limited to, *BrassCraft 14 IN Pipe Wrench, T390* (#0 26613 12881 8);
- 14 e. Defendant D.W.L. INTERNATIONAL TRADING INC.
15 manufactures, imports, distributes, and/or sells kitchen tools with grips containing
16 DEHP including, but not limited to, *Color-Coded Ladle, LDC-2,*
17 #0811642008848;
- 18 f. Defendant GENERAL CAGE, LLC manufactures, imports,
19 distributes, and/or sells hand tool grips containing DEHP including, but not
20 limited to, *Classic Products Super Scoop, Item # LS1* (#0 86951 00601 8);
- 21 g. Defendant GREAT NECK SAW MANUFACTURERS, INC.
22 manufactures, imports, distributes, and/or sells tools with grips containing DEHP
23 including, but not limited to, *Essentials Around the House Tool Kit, #21045* (#0
24 76812 21045 6);
- 25 h. Defendants IRWIN INDUSTRIAL TOOL COMPANY and
26 NEWELL RUBBERMAID INC. manufacture, import, distribute, and/or sell
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1 tools with grips containing DEHP including, but not limited to, *Irwin Vise-Grip*
2 *Wire Stripper/Cutter*, #2078305 (#0 38548 08846 4);

3 i. Defendant M & Y TRADING CORP. D/B/A HELBY IMPORT
4 COMPANY manufactures, imports, distributes, and/or craft tools with grips
5 containing DEHP, including, but not limited to, *The Bead Smith Pliers Hi Tech*
6 *Memory Wire Cutter with Spring*, #PLHT6 (#7 90524 00288 7);

7 j. Defendant PANACEA PRODUCTS CORPORATION
8 manufactures, imports, distributes, and/or sells craft tools with grips containing
9 DEHP including, but not limited to, *Panacea Wire Cutter*, #60054 (#0 93432
10 *60054 2*);

11 k. Defendant THE FAUCET-QUEENS, INC. manufactures, imports,
12 distributes, and/or sells tape measure grips containing DEHP including, but not
13 limited to, *Helping Hand 12' Tape Measure*, #20600 (#0 70792 20600 3);

14 l. Defendant ULLMAN DEVICES CORPORATION manufactures,
15 imports, distributes, and/or sells hand tool grips containing DEHP including, but
16 not limited to, *Craftsman Telescoping Inspection Mirror*, #94098 (#0 32513
17 *10028 1*);

18 m. Defendant VOXX ACCESSORIES CORPORATION
19 manufactures, imports, distributes, and/or sells hand tool grips containing DEHP
20 including, but not limited to, *RCA Coax Cable Crimping Tool*, VHI48N (#0
21 *79000 30884 3*);

22 n. Defendant WIRE AND CABLE SPECIALTIES, INC.
23 manufactures, imports, distributes, and/or sells craft tools with grips containing
24 DEHP including, but not limited to, *Beadalon Designer Series Knotting Pliers*,
25 #201E-001/MZ (#0 35926 09079 8); and
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1 products, and bring this action in the public interest pursuant to California Health & Safety Code
2 § 25249.7.

3 13. Defendant 3M COMPANY ("3M") is a person doing business within the meaning
4 of California Health & Safety Code § 25249.11.

5 14. Defendant 3M manufactures, imports, distributes, and/or offers the PRODUCTS
6 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
7 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

8 15. Defendant AWI ACQUISITION COMPANY ("AWI") is a person doing business
9 within the meaning of California Health & Safety Code § 25249.11.

10 16. Defendant AWI manufactures, imports, distributes, and/or offers the PRODUCTS
11 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
12 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

13 17. Defendant BELLOTA US CORP. ("BELLOTA") is a person doing business
14 within the meaning of California Health & Safety Code § 25249.11.

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

19 19. Defendant CORONA CLIPPER, INC. ("CORONA") is a person doing business
20 within the meaning of California Health & Safety Code § 25249.11.

21 20. Defendant CORONA manufactures, imports, distributes, and/or offers the
22 PRODUCTS for sale or use in the State of California or implies by its conduct that it
23 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
24 California.

25 21. Defendant D.W.L. INTERNATIONAL TRADING INC. ("D.W.L.") is a person
26 doing business within the meaning of California Health & Safety Code § 25249.11.

1 22. Defendant D.W.L. manufactures, imports, distributes, and/or offers the
2 PRODUCTS for sale or use in the State of California or implies by its conduct that it
3 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
4 California.

5 23. Defendant GENERAL CAGE, LLC ("GENERAL CAGE") is a person doing
6 business within the meaning of California Health & Safety Code § 25249.11.

7 24. Defendant GENERAL CAGE manufactures, imports, distributes, and/or offers the
8 PRODUCTS for sale or use in the State of California or implies by its conduct that it
9 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
10 California.

11 25. Defendant GREAT NECK SAW MANUFACTURERS ("GREAT NECK") is a
12 person doing business within the meaning of California Health & Safety Code § 25249.11.

13 26. Defendant GREAT NECK manufactures, imports, distributes, and/or offers the
14 PRODUCTS for sale or use in the State of California or implies by its conduct that it
15 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
16 California.

17 27. Defendant IRWIN INDUSTRIAL TOOL COMPANY ("IRWIN") is a person
18 doing business within the meaning of California Health & Safety Code § 25249.11.

19 28. Defendant IRWIN manufactures, imports, distributes, and/or offers the
20 PRODUCTS for sale or use in the State of California or implies by its conduct that it
21 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
22 California.

23 29. Defendant M & Y TRADING CORP. D/B/A HELBY IMPORT COMPANY ("M
24 & Y") is a person doing business within the meaning of California Health & Safety Code §
25 25249.11.

1 30. Defendant M & Y manufactures, imports, distributes, and/or offers the PRODUCTS
2 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
3 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

4 31. Defendant MASCO CORPORATION ("MASCO") is a person doing business
5 within the meaning of California Health & Safety Code § 25249.11.

6 32. Defendant MASCO manufactures, imports, distributes, and/or offers the
7 PRODUCTS for sale or use in the State of California or implies by its conduct that it
8 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
9 California.

10 33. Defendant NEWELL RUBBERMAID INC. ("NEWELL") is a person doing
11 business within the meaning of California Health & Safety Code § 25249.11.

12 34. Defendant NEWELL manufactures, imports, distributes, and/or offers the
13 PRODUCTS for sale or use in the State of California or implies by its conduct that it
14 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
15 California.

16 35. Defendant PANACEA PRODUCTS CORPORATION ("PANACEA") is a person
17 doing business within the meaning of California Health & Safety Code § 25249.11.

18 36. Defendant PANACEA manufactures, imports, distributes, and/or offers the
19 PRODUCTS for sale or use in the State of California or implies by its conduct that it
20 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
21 California.

22 37. Defendant THE FAUCET-QUEENS, INC. ("FAUCET-QUEENS") is a person
23 doing business within the meaning of California Health & Safety Code § 25249.11.

24 38. Defendant FAUCET-QUEENS manufactures, imports, distributes, and/or offers
25 the PRODUCTS for sale or use in the State of California or implies by its conduct that it
26 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
27 California.

1 39. Defendant ULLMAN DEVICES CORPORATION (“ULLMAN”) is a person
2 doing business within the meaning of California Health & Safety Code § 25249.11.

3 40. Defendant ULLMAN manufactures, imports, distributes, 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, and/or offers the PRODUCTS for sale or use in the State of
6 California.

7 41. Defendant VOXX ACCESSORIES CORPORATION (“VOXX”) is a person doing
8 business within the meaning of California Health & Safety Code § 25249.11.

9 42. Defendant VOXX manufactures, imports, distributes, and/or offers the PRODUCTS
10 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
11 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

12 43. Defendant WIRE AND CABLE SPECIALTIES, INC. (“WIRE AND CABLE”) is
13 a person doing business within the meaning of California Health & Safety Code § 25249.11.

14 44. Defendant WIRE AND CABLE manufactures, imports, distributes, and/or offers
15 the PRODUCTS for sale or use in the State of California or implies by its conduct that it
16 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
17 California.

18 45. Defendant WOODSTREAM CORPORATION (“WOODSTREAM”) is a person
19 doing business within the meaning of California Health & Safety Code § 25249.11.

20 46. Defendant WOODSTREAM manufactures, imports, distributes, and/or offers the
21 PRODUCTS for sale or use in the State of California or implies by its conduct that it
22 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
23 California.

24 47. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
25 doing business within the meaning of California Health & Safety Code § 25249.11.

26 48. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
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1 engage in the process of research, testing, designing, assembling, fabricating and/or
2 manufacturing.

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

5 50. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
6 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
7 the State of California.

8 51. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
9 business within the meaning of California Health & Safety Code § 25249.11.

10 52. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
11 of California and, in some circumstances, may also be manufacturers and/or distributors.

12 53. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
13 unknown to plaintiffs, who therefore sue said defendants by their fictitious name pursuant to
14 Code of Civil Procedure § 474. Plaintiffs are informed and believe, and on that basis allege, that
15 each of the fictitiously named defendants is responsible for the acts and occurrences herein
16 alleged. When ascertained, their true names shall be reflected in an amended complaint.

17 54. 3M, AWI, BELLOTA, CORONA, D.W.L., GENERAL CAGE, GREAT NECK,
18 IRWIN, M & Y, MASCO, NEWELL, PANACEA, FAUCET-QUEENS, ULLMAN, VOXX,
19 WIRE AND CABLE, WOODSTREAM, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
21 to hereinafter as "DEFENDANTS."

22 **VENUE AND JURISDICTION**

23 55. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of
24 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
25 because one or more instances of wrongful conduct occurred, and continues to occur, in the
26 County of Santa Clara and/or because DEFENDANTS conducted, and continue to conduct,
27 business in this County with respect to the PRODUCTS.

1 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
2 been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 62. On or about January 19, 2012, sixty-day notices of violation, together with the
4 requisite Certificates of Merit, were provided to D.W.L., M & Y, PANACEA, WIRE AND
5 CABLE, and various public enforcement agencies stating that as a result of their sales of the
6 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
7 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
8 purchasers and users first having been provided with a “clear and reasonable warning” regarding
9 such toxic exposures.

10 63. On or about January 31, 2012, a sixty-day notice of violation, together with the
11 requisite Certificate of Merit, was provided to IRWIN, NEWELL, and various public
12 enforcement agencies stating that as a result of their sales of the PRODUCTS, purchasers and
13 users in the State of California were being exposed to DEHP resulting from the reasonably
14 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
15 been provided with a “clear and reasonable warning” regarding such toxic exposures.

16 64. On or about March 29, 2012, a sixty-day notice of violation, together with the
17 requisite Certificate of Merit, was provided to GREAT NECK and various public enforcement
18 agencies stating that as a result of GREAT NECK’s sales of the PRODUCTS, purchasers and
19 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 65. On or about April 5, 2012, a sixty-day notice of violation, together with the
23 requisite Certificate of Merit, was provided to 3M and various public enforcement agencies
24 stating that as a result of their sales of the PRODUCTS, purchasers and users in the State of
25 California were being exposed to lead resulting from the reasonably foreseeable uses of the
26 PRODUCTS, without the individual purchasers and users first having been provided with a
27 “clear and reasonable warning” regarding such toxic exposures.

1 66. On or about April 5, 2012, sixty-day notices of violation, together with the
2 requisite Certificates of Merit, were provided to BELLOTA, CORONA, MASCO, ULLMAN,
3 VOXX, and various public enforcement agencies stating that as a result of their sales of the
4 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
5 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
6 purchasers and users first having been provided with a “clear and reasonable warning” regarding
7 such toxic exposures.

8 67. On or about May 10, 2012, a sixty-day notice of violation, together with the
9 requisite Certificate of Merit, was provided to FAUCET-QUEENS and various public
10 enforcement agencies stating that as a result of FAUCET-QUEENS’ sales of the PRODUCTS,
11 purchasers and users in the State of California were being exposed to DEHP resulting from the
12 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
13 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

14 68. On or about June 15, 2012, a sixty-day notice of violation, together with the
15 requisite Certificate of Merit, was provided to GENERAL CAGE and various public
16 enforcement agencies stating that as a result of GENERAL CAGE’s sales of the PRODUCTS,
17 purchasers and users in the State of California were being exposed to DEHP resulting from the
18 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
19 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

20 69. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
21 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
22 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
23 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
24 DEFENDANTS’ receipt of plaintiffs’ sixty-day notice of violation. Plaintiffs further allege and
25 believe that such violations will continue to occur into the future.

26 70. After receipt of the claims asserted in the above-referenced sixty-day notices of
27 violation (paragraphs 61 through 68), the appropriate public enforcement agencies have failed to
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1 commence and diligently prosecute a cause of action against DEFENDANTS under Proposition
2 65.

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

6 72. 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 the Listed Chemicals.

9 73. The Listed Chemicals were present in or on the PRODUCTS in such a way as to
10 expose individuals to the Listed Chemicals through dermal contact and ingestion during the
11 reasonably foreseeable use of the PRODUCTS.

12 74. The normal and reasonably foreseeable use of the PRODUCTS has caused and
13 continues to cause consumer and workplace exposures to the Listed Chemicals, as such exposure
14 is defined by 27 California Code of Regulations ("CCR") § 25602(b).

15 75. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
16 the PRODUCTS would expose individuals to the Listed Chemicals through dermal contact and
17 ingestion.

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

22 77. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and/or other individuals in the State of California who were or who could become
24 exposed to the Listed Chemicals through dermal contact and ingestion during the reasonably
25 foreseeable use of the PRODUCTS.

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

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

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

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiffs prays for judgment against DEFENDANTS as follows:

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

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

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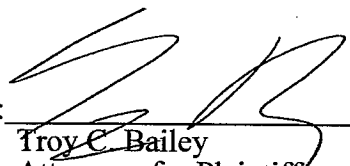
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- 3. That the Court grant plaintiffs their reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: August 24, 2012

Respectfully Submitted,

THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiffs
JOHN MOORE, RUSSELL BRIMER
and PETER ENGLANDER