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ENDORSED
FILED
ALAMEDA COUNTY
OCT 22 2012
CLERK OF THE SUPERIOR COURT
By Kmel Dhillon Deputy

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

RG12 652926

JOHN MOORE,
Plaintiff,
v.

DOREL U.S.A., INC.; DOREL JUVENILE
GROUP, INC.; and DOES 1-150, inclusive,
Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 the vinyl seats of chairs sold in California.

2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn California citizens about the risk of exposure to DEHP present in and on the vinyl seats of chairs manufactured, distributed, and offered for sale or use to consumers throughout the state of California.

3. High levels of DEHP are commonly found in and on the vinyl seats of chairs that defendants manufacture, distribute, and offer for sale to consumers throughout the state of California.

4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o 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 ...” Health & Safety Code § 25249.6.

5. On October 24, 2003, California identified and listed DEHP pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements of the Act one year later on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

6. Defendants manufacture, distribute, and sell chairs with vinyl seats that contain excessive levels of DEHP, including, but not limited to, the *Cosco Signature Wood Folding Chair, #4358-3244B, #37277WNMO (#0 44681 37663 4)*. All such chairs with vinyl seats containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

1 7. Defendants' failure to warn consumers and other individuals in the state of
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
3 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
4 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
5 & (b)(1).

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

10 9. Plaintiff also seeks civil penalties against defendants for their violations of
11 Proposition 65, as provided by Health and Safety Code section 25249.7(b).

12 **PARTIES**

13 10. Plaintiff JOHN MOORE is a citizen of the state of California who is dedicated to
14 protecting the health of California citizens through the elimination or reduction of toxic
15 exposures from consumer products; and he brings this action in the public interest pursuant to
16 Health and Safety Code section 25249.7(d).

17 11. Defendant DOREL U.S.A., INC. ("DOREL U.S.A.") is a person in the course of
18 doing business within the meaning of California Health & Safety Code § 25249.11.

19 12. Defendant DOREL U.S.A. manufactures, 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, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

22 13. Defendant DOREL JUVENILE GROUP, INC. ("DOREL JUVENILE") is a
23 person in the course of doing business within the meaning of California Health & Safety Code §
24 25249.11.

25 14. Defendant DOREL JUVENILE manufactures, distributes, and/or offers the
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
27 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

4 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture, one or more of the PRODUCTS for sale or use in the state of California.

7 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
8 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

12 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
13 the course of doing business within the meaning of Health and Safety Code section 25249.11.

14 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
15 state of California.

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

21 22. DOREL U.S.A., DOREL JUVENILE, MANUFACTURER DEFENDANTS,
22 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
23 collectively be referred to as “DEFENDANTS.”

24 VENUE AND JURISDICTION

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

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

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

13 **FIRST CAUSE OF ACTION**

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

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

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

21 28. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual ...” *Id.*

25 29. On or about May 10, 2012, plaintiff’s sixty-day notice of violation, together with
26 the requisite certificate of merit, was provided to DOREL U.S.A., DOREL JUVENILE and
27 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
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1 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the state of
2 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
3 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
4 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
5 required by Proposition 65.

6 30. DEFENDANTS have engaged in the manufacture, distribution, and offering of
7 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
8 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
9 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
10 and will continue to occur in the future.

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

14 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
15 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
16 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
17 65.

18 33. DEFENDANTS knew or should have known that the PRODUCTS they
19 manufacture, distribute, and offer for sale or use in California contain the LISTED
20 CHEMICAL.

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

23 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
24 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
25 defined by California Code of Regulations title 27, section 25602(b).

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1 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
2 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
3 and/or ingestion.

4 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
5 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
6 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
7 sale or use to individuals in the state of California.

8 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
9 consumers and other individuals in the state of California who were or who could become
10 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
11 reasonably foreseeable use of the PRODUCTS.

12 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
13 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
14 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
15 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
16 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

17 40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
18 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
19 for each violation.

20 41. As a consequence of the above-described acts, Health and Safety Code
21 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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: October 22, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
JOHN MOORE