

ENDORSED
FILED
ALAMEDA COUNTY

JAN 13 2013

CLERK OF THE SUPERIOR COURT

BY Esther Coleman DEPUTY

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 MAGNOLIA FURNITURE, LLC; and DOES
18 1-150, inclusive,

19 Defendants.

Case No. _____

RG13662039

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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BY FAX

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 vinyl/PVC chairs 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 vinyl/PVC
8 chairs manufactured, distributed, and offered for sale or use to consumers throughout the state
9 of California.

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

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell vinyl/PVC chairs that contain DEHP
24 in levels that require a warning under Proposition 65, including, but not limited to, the *Club*
25 *Chair Brown PU, SKU# 610009723, #1950*). All such vinyl/PVC chairs containing DEHP are
26 referred to collectively hereinafter as “PRODUCTS.”
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 16. 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
7 in the state of California.

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
9 the course of doing business within the meaning of Health and Safety Code section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 state of California.

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

17 20. MAGNOLIA, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
22 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
23 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
24 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
25 county with respect to the PRODUCTS.

26 22. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, section 10, which grants the Superior Court “original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this 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
6 state of California, and/or otherwise purposefully avails itself of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California courts consistent 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. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
15 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
16 harm.”

17 26. Proposition 65 states, “[n]o person in the course of doing business shall
18 knowingly and intentionally expose any individual to a chemical known to the state to cause
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such
20 individual” Health & Safety Code § 25249.6.

21 27. On August 31, 2012, plaintiff’s sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to MAGNOLIA and certain public enforcement
23 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
24 LISTED CHEMICAL, purchasers and users in the state of California were being exposed to the
25 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,
26 without the individual purchasers and users first having been provided with a “clear and
27 reasonable warning” regarding such toxic exposures, as required by Proposition 65.
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1 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
3 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
4 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
5 and will continue to occur in the future.

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

9 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
10 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
11 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
12 65.

13 31. DEFENDANTS knew or should have known that the PRODUCTS they
14 manufacture, distribute, and offer for sale or use in California contain the LISTED
15 CHEMICAL.

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

18 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
19 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
20 defined by California Code of Regulations title 27, section 25602(b).


21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
22 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
23 and/or ingestion.

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

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1 Dated: December 24, 2012

2 Respectfully Submitted,
3 THE CHANLER GROUP

4 By:  _____
5 Jennifer Henry
6 Attorneys for Plaintiff
7 JOHN MOORE

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