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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
M. SALCIDO, DEPUTY

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JOHN MOORE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

**RG13664554**

12 JOHN MOORE,

13 Plaintiff,

14 v.

15  
16 LOWE'S COMPANIES, INC.; and DOES 1-  
17 150, inclusive,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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 rainwear 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 rainwear manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC  
11 rainwear that defendants manufacture, distribute, and offer for sale to consumers throughout the  
12 State of 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, import, sell, and/or offer for sale without a  
24 warning in California, vinyl/PVC rainwear containing DEHP, including, but not limited to, the  
25 *Rain Poncho Light Duty, Item #0044282, Model #LS-RC001 (#6 62909 44282 6)*. All such  
26 vinyl/PVC rainwear containing DEHP are 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. LOWE’S COMPANIES, 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 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 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
24 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
25 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
26 PRODUCTS.



1 PRODUCTS, without the individual purchasers and users first having been provided with a  
2 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
6 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
7 continuous in nature, and will continue to occur in the future.

8 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
9 enforcement agencies have failed to commence and diligently prosecute a cause of action  
10 against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
12 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require  
13 a “clear and reasonable” warning under Proposition 65.

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

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

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

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

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

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and other individuals in the State of California who were or who would become  
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
6 reasonably foreseeable uses of the PRODUCTS.

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

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

15 39. As a consequence of the above-described acts, Health and Safety Code  
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

- 20 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
24 offering the PRODUCTS for sale or use in California without first providing a “clear and  
25 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
26 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

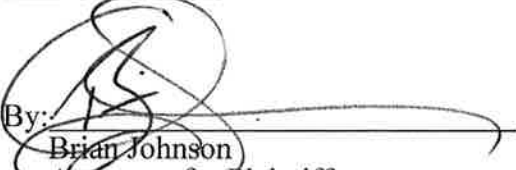
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: January 21, 2013

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Brian Johnson  
Attorneys for Plaintiff  
JOHN MOORE