

ENDORSED
FILED
ALAMEDA COUNTY

FEB 21 2014

CLERK OF THE SUPERIOR COURT
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 UNLIMITED CIVIL JURISDICTION

12 **RG 14714826**

13 JOHN MOORE,

) Case No. _____

14 Plaintiff,

15 v.

) **COMPLAINT FOR CIVIL PENALTIES
) AND INJUNCTIVE RELIEF**

16 NORWOOD PROMOTIONAL PRODUCTS,
17 LLC; and DOES 1-150, inclusive,

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

18 Defendants.
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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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"), di-n-butyl phthalate ("DBP")
5 and lead, toxic chemicals found in backpacks sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
7 California citizens about their exposure to DEHP, DBP and lead, present in or on certain
8 backpacks and duffel bags that defendants manufacture, import, distribute, and/or offer for sale
9 to consumers throughout the State of California.

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

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the "clear and reasonable warning"
18 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. On December 2, 2005, California identified and listed DBP as a chemical known
21 to cause birth defects and other reproductive harm. DBP became subject to the warning
22 requirement one year later and was, therefore, subject to the "clear and reasonable warning"
23 requirements of Proposition 65, beginning on December 2, 2006. (*Id.*)

24 6. On February 27, 1987, California identified and listed lead as a chemical known to
25 cause birth defects and other reproductive harm. Lead became subject to the warning
26 requirement one year later and was, therefore, subject to the "clear and reasonable warning"
27 requirements of Proposition 65, beginning on February 27, 1988. (*Id.*)
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1 15. **NORWOOD manufactures, imports, distributes, sells and/or offers the**
2 **PRODUCTS for sale or use in the State of California or implies by their conduct that they**
3 **manufacture, import, distribute, sell and/or offer the PRODUCTS for sale or use in the State of**
4 **California.**

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

7 17. **MANUFACTURER DEFENDANTS engage in the process of research, testing,**
8 **designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they**
9 **engage in the process of research, testing, designing, assembling, fabricating and/or**
10 **manufacturing, one or more of the PRODUCTS for sale or use in the State of California.**

11 18. **Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons**
12 **doing business within the meaning of California Health & Safety Code § 25249.11.**

13 19. **DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or**
14 **transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in**
15 **the State of California.**

16 20. **Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons**
17 **doing business within the meaning of California Health & Safety Code § 25249.11.**

18 21. **RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the**
19 **State of California and, in some circumstances, may also be manufacturers and/or distributors.**

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

25 23. **NORWOOD, MANUFACTURER DEFENDANTS, DISTRIBUTOR**
26 **DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be**
27 **referred to hereinafter as “DEFENDANTS.”**

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1 **VENUE AND JURISDICTION**

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

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

11 26. 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 either are citizens of the State of California, have sufficient minimum contacts in
14 the State of California, or otherwise purposefully avail themselves of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
16 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 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 26, inclusive.

21 28. The citizens of the State of California have expressly stated in Proposition 65 that
22 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
23 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

27 (*Id.*)

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1 30. On or about May 10, 2012, a 60-Day Notice of Violation, together with the
2 requisite Certificate of Merit, was provided to NORWOOD, others and various public
3 enforcement agencies stating that as a result of DEFENDANTS' manufacture, distribution and/or
4 sale of the PRODUCTS, purchasers and users in the State of California were being exposed to
5 DEHP and DBP resulting from the reasonably foreseeable uses of the PRODUCTS, without the
6 individual purchasers and users first having been provided with a "clear and reasonable warning"
7 regarding such toxic exposures ("May Notice").

8 31. On or about November 15, 2013, a Supplemental 60-Day Notice of Violation,
9 together with the requisite Certificate of Merit, was provided to NORWOOD and various public
10 enforcement agencies stating that as a result of DEFENDANTS' manufacture, distribution and/or
11 sale of the PRODUCTS, purchasers and users in the State of California were being exposed to
12 DEHP and lead resulting from the reasonably foreseeable uses of the PRODUCTS, without the
13 individual purchasers and users first having been provided with a "clear and reasonable warning"
14 regarding such toxic exposures ("November Notice").

15 32. The May Notice and the November Notice shall hereinafter be collectively referred
16 to as the "Notices."

17 33. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
18 offering of the PRODUCTS for sale or use, in violation of California Health & Safety Code
19 § 25249.6, and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
20 PRODUCTS for sale or use, in violation of California Health & Safety Code § 25249.6, has
21 continued to occur beyond DEFENDANTS' receipt of the Notices. Plaintiff further alleges and
22 believes that such violations will continue to occur into the future.

23 34. After receipt of the claims asserted in the Notices, the appropriate public
24 enforcement agencies have failed to commence and diligently prosecute a cause of action against
25 DEFENDANTS under Proposition 65.

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1 35. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
2 use in California by DEFENDANTS contained DEHP, DBP and lead above the allowable state
3 limits.

4 36. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
6 DEHP, DBP and lead.

7 37. DEHP, DBP and lead were present in or on the PRODUCTS in such a way as to
8 expose individuals to DEHP, DBP and lead through dermal contact and/or ingestion during the
9 reasonably foreseeable use of the PRODUCTS including through workplace exposure to the
10 PRODUCTS.

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

14 39. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
15 the PRODUCTS would expose individuals to DEHP, DBP and lead through dermal contact
16 and/or ingestion.

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

21 41. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 consumers and/or other individuals in the State of California who were or who could become
23 exposed to DEHP, DBP and lead through dermal contact and/or ingestion during the reasonably
24 foreseeable use of the PRODUCTS.

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

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

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

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1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing
8 distributing, and/or offering the PRODUCTS for sale or use in California, without providing
9 "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with
10 exposures to DEHP, DBP and lead;

11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations title 27, section 25601 et seq.;

15 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

16 5. That the Court grant such other and further relief as may be just and proper.
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18 Dated: February 20, 2014

Respectfully Submitted,
THE CHANLER GROUP

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21 By: 

Troy C. Bailey
Attorneys for Plaintiff
JOHN MOORE
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