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ENDORSED  
FILED  
ALAMEDA COUNTY  
SEP 17 2014  
CLERK OF THE SUPERIOR COURT  
By A. Anita Dhir Deputy

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
15

16 MARK MOORBERG,

17 Plaintiff,

18 v.

19 MCCAULOU'S, INC.; and DOES 1-150,  
20 inclusive,

21 Defendants.  
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Case No. **RG14740993**

**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 MARK  
3 MOORBERG in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed about exposures to lead and di(2-ethylhexyl)phthalate (“DEHP”),  
5 toxic chemicals that are found in and on vinyl/PVC clutches that are sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risks of exposures to lead and DEHP present in and on the  
8 vinyl/PVC clutches manufactured, distributed, and offered for sale or use to consumers  
9 throughout the State of California.

10 3. Detectable levels of lead and DEHP are commonly found in and on the vinyl/PVC  
11 clutches that defendants import, manufacture, distribute, ship, sell and/or offer for sale to  
12 consumers throughout the 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. On February 27, 1987, California listed lead pursuant to Proposition 65 as a  
19 chemical that is known to cause birth defects or other reproductive harm. Lead became subject  
20 to the “clear and reasonable warning” requirements of the act one year later on February 27,  
21 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
23 chemical that is known to cause birth defects or other reproductive harm. DEHP became  
24 subject to the “clear and reasonable warning” requirements of the act one year later on October  
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
26 25249.10(b).

1           7. Defendants manufacture, distribute, import, sell, and offer for sale without  
2 warning in California, vinyl/PVC clutches containing lead and DEHP, including, but not limited  
3 to, the *Picnic Plus by Spectrum Carlotta Clutch, PSM-112BC (UPC #8 07348 12068 7)*. All  
4 such vinyl/PVC clutches containing lead and DEHP are referred to collectively hereinafter as  
5 the “PRODUCTS.” Lead and DEHP are referred to hereinafter as the “LISTED  
6 CHEMICALS.”

7           8. Defendants’ failure to warn workers, consumers, and other individuals in  
8 California of the harms associated with exposures to the LISTED CHEMICALS in conjunction  
9 with defendants’ sales of the PRODUCTS containing the LISTED CHEMICALS constitute  
10 violations of Proposition 65, and subject defendants to enjoinder of such conduct, as well as  
11 civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

12           9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
13 permanent injunctive relief to compel defendants to provide purchasers or users of the  
14 PRODUCTS with the required warning regarding the health hazards associated with exposures  
15 to the LISTED CHEMICALS. Health & Safety Code § 25249.7(a).

16           10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
17 penalties against defendants, and each of them, for each violation of Proposition 65.

18   **PARTIES**

19           11. Plaintiff MARK MOORBERG is a citizen of the State of California who is  
20 dedicated to protecting the health of California citizens through the elimination or reduction of  
21 harmful exposures to toxic chemicals from consumer products. He brings this action in the  
22 public interest pursuant to Health and Safety Code section 25249.7(d).

23           12. Defendant MCCAULOU’S, INC. (“MCCAULOU’S”) is a person in the course of  
24 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

25           13. MCCAULOU’S manufactures, imports, distributes, sells, and/or offers the  
26 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
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1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
4 person in the course of doing business within the meaning of Health and Safety Code sections  
5 25249.6 and 25249.11.

6 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
7 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
8 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
9 California.

10 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
11 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
12 and 25249.11.

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

16 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
17 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
18 and 25249.11.

19 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
20 State of California.

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



1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

7 28. On April 16, 2014, plaintiff’s sixty-day notice of violation, together with the  
8 requisite certificate of merit, was provided to MCCAULOU’S and certain public enforcement  
9 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
10 LISTED CHEMICALS, workers, consumers, and other individuals in the State of California  
11 were being exposed to the LISTED CHEMICALS resulting from their reasonably foreseeable  
12 use of the PRODUCTS, without the individual purchasers and users first having received a  
13 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

14 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
15 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
16 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
17 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
18 continuous in nature, and will continue to occur in the future.

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

22 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
23 or use in California by DEFENDANTS contain the LISTED CHEMICALS in such a way that  
24 the reasonably foreseeable uses of these products result in exposures that require a “clear and  
25 reasonable” warning under Proposition 65.

1           32. DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
3 CHEMICALS.

4           33. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as  
5 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable  
6 use.

7           34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
8 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are  
9 defined by title 27 of the California Code of Regulations, section 25602(b).

10          35. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
11 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact  
12 and/or ingestion.

13          36. DEFENDANTS intend for such exposures to the LISTED CHEMICALS from the  
14 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental  
15 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
16 use to individuals in the State of California.

17          37. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
18 workers, consumers and other individuals in California not covered by California’s  
19 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,  
20 exposed to the LISTED CHEMICALS.

21          38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
22 directly by California voters, workers, consumers, and other individuals exposed to the LISTED  
23 CHEMICALS through dermal contact and/or ingestion resulting from the reasonably  
24 foreseeable uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable  
25 warning,” have suffered, and continue to suffer, irreparable harm for which they have no plain,  
26 speedy, or adequate remedy at law.

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

4 40. As a consequence of the above-described acts, Health and Safety Code  
5 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
6 DEFENDANTS.

7 **PRAYER FOR RELIEF**

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

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


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

17 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

18 4. That the Court grant such other and further relief as may be just and proper.

19 Dated: September 17, 2014

20 Respectfully Submitted,  
21 THE CHANLER GROUP

22  
23 By:   
24 Christopher Tuttle, Esq.  
25 Attorneys for Plaintiff  
26 MARK MOORBERG  
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