

1 Christopher C. Moscone, State Bar No. 170250
2 Rachel J. Sater, State Bar No. 147976
3 Steven L. Iriki, State Bar No. 142533
4 MOSCONE EMBLIDGE SATER & OTIS LLP
5 220 Montgomery Street, Suite 2100
6 San Francisco, CA 94104
7 Telephone: (415) 362-3599
8 Facsimile: (415) 362-2006

9 Clifford A. Chanler, State Bar No. 135534
10 THE CHANLER GROUP
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710
14 Telephone: (510) 848-8880
15 Facsimile: (510) 848-8118

16 Attorneys for Plaintiff
17 MARK MOORBERG

ENDORSED
FILED
Superior Court of California
County of San Francisco

AUG 14 2014

CLERK OF THE COURT
BY: ELIAS BATA
ELIAS BATA Deputy Clerk

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

20 MARK MOORBERG,
21 Plaintiff,

22 v.

23 CARAVAN CANOPY INT'L, INC.; THE
24 SPORTS AUTHORITY INC.; and DOES
25 1 -100, inclusive,
26 Defendants.

Case No. C.G.C. - 14 - 541131

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff MARK MOORBERG ("PLAINTIFF") 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 foldable seats with vinyl/PVC shoulder straps sold in California. DEHP is a toxic chemical used to treat vinyl/PVC, which is used in a variety of products.

1 2. By this Complaint, PLAINTIFF seeks to remedy Defendants continuing failures
2 to warn California citizens about the risk of exposure to DEHP present in and on foldable seats
3 with vinyl/PVC shoulder straps manufactured, distributed, and offered for sale or use to
4 consumers throughout the State of California.

5 3. Detectable levels of DEHP are commonly found in and on foldable seats with
6 vinyl/PVC shoulder straps that Defendants manufacture, distribute, and offer for sale to
7 consumers throughout the State of California. Individuals in California, including infants and
8 children, are exposed to DEHP in the products through various routes of exposure: (i) through
9 inhalation when DEHP are released from foldable seats with vinyl/PVC shoulder straps; (ii)
10 through dermal exposure when DEHP from foldable seats with vinyl/PVC shoulder straps
11 accumulate in ambient particles that are subsequently touched by such individuals; and (iii)
12 through ingestion when such particles are brought into contact with the mouth.

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
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to 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 cancer. DEHP became subject to the “clear and
20 reasonable warning” requirements of the Act one year later on October 24, 2004. Cal. Code
21 Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. DEHP is hereinafter referred to as the “LISTED CHEMICAL.”

23 7. Defendant CARAVAN CANOPY INT’L, INC. (“CARAVAN”) manufactures,
24 distributes, imports, sells and/or offers for sale in California foldable seats with vinyl/PVC
25 shoulder straps containing DEHP without a warning including, but not limited to, Sports
26 Authority Foldable Steel Frame Event Seat, *SKU: 27135660, Style: 80009200000, UPC #6*
27 *8921580920 4.*

1 because PLAINTIFF seeks civil penalties against DEFENDANTS, because one or more
2 instances of wrongful conduct occurred, and continue to occur, in the City and County of San
3 Francisco, and/or because DEFENDANTS conducted, and continue to conduct, business in this
4 county with respect to the PRODUCTS.

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

9 22. The California Superior Court has jurisdiction over DEFENDANTS based on
10 PLAINTIFF’S information and good faith belief that each of the DEFENDANTS is a person,
11 firm, corporation, or association that is a citizen of the State of California, has sufficient
12 minimum contacts in the State of California, and/or otherwise purposefully avails itself of the
13 California market. DEFENDANTS’ purposeful availment of California as a marketplace for
14 the PRODUCTS renders the exercise of personal jurisdiction by California courts over
15 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

16 **FIRST CAUSE OF ACTION**

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

18 23. PLAINTIFF re-alleges and incorporates by reference, as if fully set forth herein,
19 Paragraphs 1 through 22, inclusive.

20 24. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
21 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
22 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
23 harm.”

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

1 26. On May 21, 2014, PLAINTIFF'S sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to CARAVAN and SPORTS AUTHORITY and
3 certain public enforcement agencies stating that, as a result of DEFENDANTS' sales of the
4 PRODUCTS containing DEHP, purchasers and users in the State of California were being
5 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
6 the individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures, as required by Proposition 65.

8 27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
9 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
10 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
11 PLAINTIFF'S sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing
12 and continuous in nature, and will continue to occur in the future.

13 28. After receiving PLAINTIFF'S sixty-day notice of violation, the appropriate
14 public enforcement agencies have failed to commence and diligently prosecute a cause of
15 action against DEFENDANTS under Proposition 65.

16 29. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
17 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they
18 require a "clear and reasonable" warning under Proposition 65.

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

22 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as
23 to expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
24 inhalation during reasonably foreseeable use of the PRODUCTS including through workplace
25 exposure to the PRODUCTS.

26 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused,
27 and continue to cause, consumer exposures to the LISTED CHEMICAL; as such exposures are
28 defined by the California Code of Regulations Title 27, section 25602(b).

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiffs pray for judgment against DEFENDANTS, and each of them, as
3 follows:

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

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

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;
16 and

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

19 Dated: August 13, 2014

Respectfully Submitted,

20 MOSCONE EMBLIDGE SATER & OTIS LLP

21 By: 
22 _____
23 Steven L. Iriki
24 Attorneys for Plaintiff MARK MOORBERG
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