

ENDORSED  
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Superior Court of California  
County of San Francisco

JUL 17 2015

CLERK OF THE COURT  
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 CGC 15-546938

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 SCHOOL SPECIALTY, INC. and DOES 1-  
19 150, inclusive,

20 Defendants.

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

22 **COMPLAINT FOR CIVIL PENALTIES  
23 AND INJUNCTIVE RELIEF**

24 (Health & Safety Code § 25249.5 *et seq.*)

**NATURE OF THE ACTION**

1  
2           1.     This Complaint is a representative action brought by plaintiff JOHN MOORE  
3 (“MOORE”) in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed of the health hazards caused by exposures to Di(2-  
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in and on vinyl/PVC backpacks and in  
6 and on headphones with vinyl/PVC components.

7           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
8 warn California citizens and other individuals about the risks of exposure to DEHP present in  
9 and on vinyl/PVC backpacks and in and on headphones with vinyl/PVC components  
10 manufactured, distributed and offered for sale or use to consumers and other individuals  
11 throughout the State of California.

12           3.     Detectable levels of DEHP are found in and on the vinyl/PVC backpacks and in  
13 and on the headphones with vinyl/PVC components that defendants manufacture, distribute, and  
14 offer for sale to consumers and other individuals throughout the State of California.

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

20           5.     Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
21 DEHP as a chemical known to cause birth defects and reproductive harm. DEHP became  
22 subject to the “clear and reasonable warning” requirements of the act one year later on October  
23 24, 2004. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
24 25249.10(b).

25           6.     Defendants manufacture, distribute, import, sell, and offer for sale without health  
26 hazard warnings in California (a) vinyl/PVC backpacks containing DEHP including, but not  
27 limited to, the *School Smart 15” Clear Youth Backpack, #1336644, Model: WBT4204-CL, UPC*  
28

1 #8 85634 01619 7 (“BACKPACK PRODUCTS”), and (b) headphones with vinyl/PVC  
2 components containing DEHP including, but not limited to, the *Califone Stereo Headphone,*  
3 *Model 3068AV, UPC #6 10356 21300 1* (“HEADPHONE PRODUCTS”). All BACKPACK  
4 PRODUCTS and HEADPHONE PRODUCTS are referred to collectively hereinafter as  
5 “PRODUCTS.”

6 7. DEHP is referred to hereinafter as “LISTED CHEMICALS”.

7 8. Defendants’ failure to warn consumers and other individuals in the State of  
8 California of the health hazards associated with exposures to the LISTED CHEMICALS in  
9 conjunction with defendants’ sales of the PRODUCTS are violations of Proposition 65, and  
10 subject defendants, and each of them, to enjoinder of such conduct as well as civil penalties  
11 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 § 25249.7(b), plaintiff also seeks civil  
17 penalties against defendants for their violations of Proposition 65.

18 **PARTIES**

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

23 12. Defendant SCHOOL SPECIALTY, INC. (“SCHOOL SPECIALTY”) is a person  
24 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
25 25249.11.

26 13. SCHOOL SPECIALTY manufactures, imports, distributes, sells, and/or offers the  
27 PRODUCTS for sale or use in the State of California, or 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 §§  
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 §§ 25249.6 and  
12 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 §§ 25249.6 and  
18 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 § 474. Plaintiff is informed and believes, and on that basis alleges, that  
24 each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
25 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 February 27, 2015, plaintiff served a sixty-day notice of violation, together  
8 with the requisite certificate of merit, on SCHOOL SPECIALTY and certain public  
9 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS  
10 containing the LISTED CHEMICALS, purchasers and users in the State of California were  
11 being exposed to the LISTED CHEMICALS resulting from their reasonably foreseeable use of  
12 the PRODUCTS, without the individual purchasers and users first having been provided with a  
13 “clear and reasonable warning” regarding the harms associated with such exposures, as required  
14 by Proposition 65.

15 29. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
16 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’  
17 violations continue beyond their receipt of plaintiff’s sixty-day notice of violation.  
18 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in  
19 the future.

20 30. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate  
21 public enforcement agencies have commenced and diligently prosecuted a cause of action  
22 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the  
23 subject of plaintiff’s notice of violation.

24 31. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
25 offer for sale or use in California cause exposures to the LISTED CHEMICALS as a result of  
26 the reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS  
27 and endured by consumers and other individuals in California are not exempt from the “clear  
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1 and reasonable” warning requirements of Proposition 65, yet DEFENDANTS provide no  
2 warning.

3 32. DEFENDANTS knew or should have known that the PRODUCTS they  
4 manufactured, imported, distributed, sold, and offered for sale or use in California contained the  
5 LISTED CHEMICALS.

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

9 34. The normal and reasonably foreseeable use of the PRODUCTS caused, and  
10 continues to cause, consumer exposures to the LISTED CHEMICALS, as defined by Title 27 of  
11 the California Code of Regulations, § 25602(b).

12 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
13 the PRODUCTS exposed individuals to the LISTED CHEMICALS through dermal contact  
14 and/or ingestion.

15 36. DEFENDANTS intended that exposures to the LISTED CHEMICALS from the  
16 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental  
17 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS  
18 for sale or use to consumers and other individuals in California.

19 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
20 consumers and other individuals in California who were or who would become exposed to the  
21 LISTED CHEMICALS through dermal contact and/or ingestion resulting from their use of the  
22 PRODUCTS.

23 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
24 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal  
25 contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold  
26 without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer,  
27 irreparable harm for which they have no plain, speedy, or adequate remedy at law.  
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