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ENDORSED
FILED
ALAMEDA COUNTY

SEP 13 2016

CLERK OF THE SUPERIOR COURT
By Maria Carrera
MARIA CARRERA, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

PLASTIC DEVELOPMENT GROUP, LLC;
and DOES 1-150, inclusive,

Defendants.

Case No. RG 16830930

**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 the
3 public interest of the citizens of the State of California to enforce the People's right to be
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate ("DEHP"), a
5 toxic chemical found in and on the chairs with vinyl/PVC upholstery sold by defendants in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens about the risk of exposure to DEHP present in chairs with vinyl/PVC
9 upholstery manufactured, distributed, and offered for sale or use to consumers throughout the
10 State of California.

11 3. Detectable levels of DEHP are found in and on the chairs with vinyl/PVC
12 upholstery that defendants manufacture, distribute, and offer for sale to consumers throughout
13 the State of California.

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

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

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without
25 health hazard warnings in California, chairs with vinyl/PVC upholstery that contain DEHP
26 including, but not limited to, *LifeStyles by PDG Ladder Back Folding Chair, Item: 840, UPC #8*
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1 55488 00425 1. All such chairs with vinyl/PVC upholstery containing DEHP are referred to
2 collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers in the State of California of the health
4 hazards associated with exposures to DEHP in conjunction with defendants' sales of the
5 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
6 enjoinderment of such conduct as well as civil penalties for each violation. Health & Safety Code
7 § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
10 the required warning regarding the health hazards associated with exposures to DEHP. Health
11 & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff John Moore is a citizen of the State of California who is dedicated to
16 protecting the health of California citizens through the elimination or reduction of toxic
17 exposures from consumer products; and he brings this action in the public interest pursuant to
18 Health and Safety Code section 25249.7(d).

19 11. Defendant PLASTIC DEVELOPMENT GROUP, LLC ("PDG") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

22 12. PDG manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
26 person in the course of doing business within the meaning of Health and Safety Code sections
27 25249.6 and 25249.11.

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1 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
2 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
3 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
4 sale or use in California.

5 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
6 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
7 and 25249.11.

8 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
9 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
10 retailers for sale or use in the State of California, or each implies by its conduct that it
11 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
12 individuals, businesses, or retailers for sale or use in the State of California.

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

16 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
17 individuals in the State of California.

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

23 20. PDG, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
24 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively
25 as the “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
5 wrongful conduct occurred, and continue to occur, in this county, and/or because
6 DEFENDANTS conducted, and continue to conduct, business in Alameda with respect to the
7 PRODUCTS.

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

12 23. The California Superior Court has jurisdiction over DEFENDANTS based on
13 plaintiff's information and good faith belief that DEFENDANTS are each a person, firm,
14 corporation or association that is a citizen of the State of California, has sufficient minimum
15 contacts in the State of California, and/or otherwise purposefully avails itself of the California
16 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
17 California courts consistent with traditional notions of fair play and substantial justice.

18 **FIRST CAUSE OF ACTION**

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

20 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 23, inclusive.

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

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

3 27. On May 26, 2016 a 60-Day Notice of Violation (“Notice”) was provided to PDG
4 and certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
5 PRODUCTS containing DEHP, purchasers and users in the State of California were being
6 exposed to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS, without
7 the individual purchasers and users first having been provided with a “clear and reasonable
8 warning” regarding such toxic exposures, as required by Proposition 65.

9 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of
10 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
11 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notice.
12 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to
13 occur in the future.

14 29. After receiving the claims asserted in the Notice, the appropriate public
15 enforcement agencies have failed to commence and diligently prosecute a cause of action
16 against DEFENDANTS under Proposition 65.

17 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
18 California by DEFENDANTS contain DEHP in amounts above the allowable state limits, such
19 that they require a “clear and reasonable” warning under Proposition 65.

20 31. DEFENDANTS knew or should have known that the PRODUCTS they
21 manufactured, distributed, and offered for sale or use in California contained DEHP.

22 32. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
23 through dermal contact and/or ingestion during reasonably foreseeable use.

24 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
25 continue to cause, consumer exposures to DEHP, as such exposures are defined by California
26 Code of Regulations title 27, section 25602(b).

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1 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
2 of the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

3 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
4 foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
5 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to
6 individuals in the State of California.

7 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
8 consumers and other individuals in the State of California who were or who would become
9 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
10 uses of the PRODUCTS.

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

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

19 39. As a consequence of the above-described acts, Health and Safety Code
20 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
21 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 Health and Safety Code section 25249.7(b), assess
4 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
5 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" in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;


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 PRGDUCTS
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: September 13, 2016

Respectfully submitted,
THE CHANLER GROUP

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20 By: 
21 Ryan Oca
22 Attorneys for Plaintiff
23 John Moore
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