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Brian Johnson, State Bar No. 235965  
Kimberly Gates, State Bar No. 282369  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
Email: brian@chanler.com  
Email: kimberly@chanler.com

Attorneys for Plaintiff  
JOHN MOORE

**FILED**  
San Francisco County Superior Court  
NOV 15 2016  
BY: \_\_\_\_\_  
CLERK OF THE COURT  
Deputy Clerk

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

CGC 16-555388

JOHN MOORE,  
Plaintiff,  
v.  
K. & M. INTERNATIONAL, INC.; and DOES  
1-150, inclusive,  
Defendants.

Case No. \_\_\_\_\_  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code § 25249.5 *et seq.*)

**NATURE OF THE ACTION**

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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 vinyl/PVC keychains sold by defendants in California.

6           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code §  
8 6300 *et seq.*, who purchase, use or handle defendants’ products, about the risks of exposure to  
9 DEHP present in and on the vinyl/PVC keychains manufactured, imported, distributed, sold,  
10 and offered for sale or use throughout the State of California. Individuals not covered by  
11 California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*, who purchase, use or  
12 handle defendants’ products, are referred to hereinafter as “consumers.”

13           3.     Detectable levels of DEHP are found in and on the vinyl/PVC keychains that  
14 defendants manufacture, import, distribute, sell, and offer for sale to consumers throughout the  
15 State of California.

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

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

26           6.     Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, vinyl/PVC keychains that contain DEHP, including, but not  
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1 limited to, the *Wild Republic Just My Style DIY Purse, AN2, Item #10694, UPC #0 92389 10694*

2 7. All such vinyl/PVC keychains containing DEHP are referred to collectively hereinafter as  
3 "PRODUCTS."

4 7. Defendants' failure to warn consumers in the State of California of the health  
5 hazards associated with exposures to DEHP in conjunction with defendants' sales of the  
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
7 enjoinder of such conduct, as well as civil penalties for each violation. Health & Safety Code  
8 §§ 25249.7(a) & (b)(1).

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

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

15 **PARTIES**

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

20 11. Defendant K. & M. INTERNATIONAL, INC. ("K. & M.") is a person in the  
21 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
22 25249.11.

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

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

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

6 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
7 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
8 25249.11.

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

14 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
15 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
16 25249.11.

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

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

24 20. K. & M., MANUFACTURER DEFENDANTS, DISTRIBUTOR  
25 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter be referred to collectively  
26 as the "DEFENDANTS."  
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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Superior Court for the County of San Francisco pursuant to  
3 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent  
4 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more  
5 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because  
6 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to  
7 the 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 June 14, 2016, plaintiff served a sixty-day notice of violation, together with  
4 the accompanying certificate of merit, on K. & M., the California Attorney General’s Office,  
5 and all other requisite public enforcement agencies, alleging that, as a result of DEFENDANTS’  
6 sales of the PRODUCTS, consumers and other individuals in the State of California are being  
7 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without  
8 these consumers and other individuals first receiving a “clear and reasonable warning”  
9 regarding the harms associated with exposures to DEHP, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
11 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’  
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As  
13 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined,  
14 will continue in the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
17 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of  
18 violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
20 offer for sale in California cause exposures to DEHP as a result of the reasonably foreseeable use  
21 of the PRODUCTS. Such exposures, caused by DEFENDANTS and endured by consumers and  
22 other individuals in California, are not exempt from the “clear and reasonable” warning  
23 requirements of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’  
24 violations of Proposition 65 as a result of their failure to provide warnings to consumers and  
25 other individuals exposed to DEHP from the PRODUCTS in violation of Proposition 65 have  
26 continued since as far back as June 14, 2013.

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1           31. DEFENDANTS know or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

3           32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
4 and other individuals through dermal contact and/or ingestion during reasonably foreseeable  
5 use.

6           33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
7 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
8 of Regulations, § 25602(b).

9           34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
10 PRODUCTS exposes consumers and other individuals to DEHP through dermal contact and/or  
11 ingestion.

12           35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
13 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
14 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale to  
15 consumers in California.

16           36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
17 consumers and other individuals in California who have been, or who will be, exposed to DEHP  
18 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

19           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
20 directly by California voters, consumers and other individuals exposed to DEHP through dermal  
21 contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell  
22 without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer,  
23 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

24           38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
25 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of  
26 \$2,500 per day for each violation.

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1 39. As a consequence of the above-described acts, Health and Safety Code  
2 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

9 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily  
10 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the  
11 PRODUCTS for sale or use in California without first providing a "clear and reasonable  
12 warning" in accordance with title 27 of the California Code of Regulations, § 25601 *et seq.*,  
13 regarding the harms associated with exposures to DEHP;

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

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

19 5. That the Court grant such other and further relief as may be just and proper.  
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21 Dated: November 15, 2016

Respectfully submitted,  
THE CHANLER GROUP

22  
23 By: K. Gates  
24 Kimberly Gates  
25 Attorney for Plaintiff  
26 JOHN MOORE  
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