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San Francisco County Superior Court
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

CGC-18-568440

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 UNIVERSAL BEAUTY PRODUCTS
20 INCORPORATED.; and DOES 1-150,
21 inclusive,

22 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX
NATIONWIDE LEGAL LLC
859 HARRISON ST. SF, CA 94106
415-351-0400

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 vinyl/PVC toiletry cases 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 toiletry cases that are manufactured, imported, sold, or
10 distributed 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 toiletry cases that
14 defendants manufacture, import, sell, or distribute for sale to consumers throughout the State of
15 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 and
25 25249.10(b).

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

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

8 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
9 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
10 25249.11.

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

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

21 19. 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.

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

3 26. 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 27. On March 21, 2018, Plaintiff served a sixty-day notice of violation, together with
8 the accompanying certificate of merit, on UNIVERSAL BEAUTY, the California Attorney
9 General’s Office, and the requisite public enforcement agencies, alleging that, as a result of
10 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
11 exposed to DEHP, resulting from their reasonably foreseeable use of the PRODUCTS, without
12 consumers first receiving a “clear and reasonable warning” regarding the harms associated with
13 exposures to DEHP, as required by Proposition 65.

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

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

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

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1 31. DEFENDANTS knew 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 through dermal contact and/or ingestion during reasonably foreseeable use.

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

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

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

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

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

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

25 39. As a consequence of the above-described acts, Health and Safety Code
26 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 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 § 25249.7(b), assess civil
4 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
5 violation;

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

11 3. That the Court, pursuant to Health and Safety Code § 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, § 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: July 26, 2018

Respectfully submitted,
THE CHANLER GROUP

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20 By: Kimberly Gates
21 Kimberly Gates
22 Attorneys for Plaintiff
23 JOHN MOORE
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