

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
Daniel Bornstein, State Bar No. 181711
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 23 2010

CASE MANAGEMENT CONFERENCE BETWEEN
ROSSALY DE LA VEGA-NAVARRO
Deputy Clerk

SEP 24 2010 - 9:00 AM

DEPARTMENT 212

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

CGC-10-498987

JOHN MOORE,

Plaintiff,

v.

KATE SPADE, LLC.; and DOES 1-150,
inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. 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
3 the public interest of the citizens of the State of California, to enforce the People's right to be
4 informed of the presence of di(2-ethylhexyl)phthalate, a toxic chemical found in vinyl bags that
5 appeal to children sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failures to
7 warn California citizens about their exposure to di(2-ethylhexyl)phthalate present in and/or on
8 certain vinyl key chains that defendant manufactures, distributes, and/or offers for sale to
9 consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and/or on certain
11 vinyl key chains that defendant manufactures, distributes, and/or offers for sale to consumers
12 throughout the State of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code Section 25249.6 *et seq.* (Proposition 65), "No person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as
19 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the "clear
21 and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004.
22 (*27 CCR § 27001; Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the "LISTED
24 CHEMICAL."

25 7. Defendant manufactures, distributes, and/or sells vinyl key chains containing
26 excessive levels of the LISTED CHEMICAL including, but not limited to, *Kate Spade*

1 *Dalmatian and Hydrant Key Fobs, PWRU0911 (#0 98678 45334 9)*. All such vinyl key chains
2 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

3 8. Defendant's failures to warn consumers and/or other individuals in the State of
4 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale
5 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of
6 such conduct as well as civil penalties for each such violation.

7 9. For defendant's violations of Proposition 65, plaintiff seeks preliminary injunctive
8 and permanent injunctive relief to compel defendants to provide purchasers or users of the
9 PRODUCTS with the required warning regarding the health hazards of the LISTED
10 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

11 10. Plaintiff also seeks civil penalties against defendants for their violations of
12 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

13 PARTIES

14 11. Plaintiff JOHN MOORE, is a citizen of the City and County of Sacramento in the
15 State of California who is dedicated to protecting the health of California citizens through the
16 elimination or reduction of toxic exposures from consumer products, and brings this action in the
17 public interest pursuant to California Health & Safety Code Section 25249.7.

18 12. Defendant KATE SPADE, LLC. ("KATE SPADE") is a person doing business
19 within the meaning of California Health & Safety Code Section 25249.11.

20 13. Defendant KATE SPADE manufactures, distributes, and/or offers the
21 PRODUCTS for sale or use in the State of California or implies by its conduct that it
22 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

23 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
24 persons doing business within the meaning of California Health & Safety Code Section
25 25249.11.

26 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
28

1 engage in the process of research, testing, designing, assembling, fabricating and/or
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

3 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 doing business within the meaning of California Health & Safety Code Section 25249.11.

5 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
6 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
7 the State of California.

8 18. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
9 business within the meaning of California Health & Safety Code Section 25249.11.

10 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

12 20. At this time, the true names of Defendants DOES 1-150, inclusive, are unknown
13 to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil
14 Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of
15 the fictitiously named defendants is responsible for the acts and occurrences herein alleged.
16 When ascertained, their true names shall be reflected in an amended complaint.

17 21. KATE SPADE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
19 to hereinafter as “DEFENDANTS.”

20
21 **VENUE AND JURISDICTION**

22 22. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
23 Civil Procedure Sections 394, 395, 395.5, because this Court is a court of competent jurisdiction,
24 because one or more instances of wrongful conduct occurred, and continues to occur, in the
25 County of San Francisco and/or because DEFENDANTS conducted, and continue to conduct,
26 business in this County with respect to the PRODUCTS.

1 having been provided with a “clear and reasonable warning” regarding such toxic exposures
2 (“60-Day Notice of Violation”).

3 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
5 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or
6 use in violation of California Health & Safety Code Section 25249.6 has continued to occur
7 beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice of Violation. Plaintiff further
8 alleges and believes that such violations will continue to occur into the future.

9 30. After receipt of the claims asserted in the 60-Day Notice of Violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a
11 cause of action against DEFENDANTS under Proposition 65.

12 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
14 limits.

15 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
17 LISTED CHEMICAL.

18 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
19 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
20 during the reasonably foreseeable use of the PRODUCTS.

21 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
22 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
23 by 27 CCR Section 25602(b).

24 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
26 and/or ingestion.

