

SAN FRANCISCO COUNTY  
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11 JOHN MOORE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 MOTION SYSTEMS LLC; BABY BOOM  
19 CONSUMER PRODUCTS INC.; MITZI  
20 INTERNATIONAL HANDBAGS &  
21 ACCESSORIES, LTD.; THE BETESH  
22 GROUP; and DOES 1-150, inclusive,

23 Defendants.

Case No. CGC-11-512247

**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 (“DEHP”), a toxic chemical found in  
5 handbags and cases for mobile electronic devices sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about their exposure to DEHP present in or on handbags and cases for  
8 mobile electronic devices manufactured, distributed, and/or offered for sale or use to consumers  
9 throughout the State of California.

10 3. High levels of DEHP are commonly found in and on the handbags and cases for  
11 mobile electronic devices that defendants manufacture, distribute, and/or offer for sale to  
12 consumers throughout the State of California.

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

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

23 6. Defendants manufacture, distribute, and/or sell handbags and cases for mobile  
24 electronic devices containing excessive levels of DEHP, including, but not limited to, the *Icon*  
25 *Compact Camcorder/Digital Camera Case, SLV26-BLK (#7 37073 04512 5)* and the *Harvé*  
26 *Benard by Bernard Holtzman Handbag, HB016BRN, #31000479 (#7 89829 09644 8)*. All such  
27  
28

1 handbags and cases for mobile electronic devices containing DEHP shall hereinafter  
2 collectively be referred to as the "PRODUCTS."

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

7 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
8 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 9. Plaintiff also seeks civil penalties against defendants for their violations of  
12 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

13 **PARTIES**

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

18 11. Defendant MOTION SYSTEMS LLC ("MOTION SYSTEMS") is a person in the  
19 course of doing business within the meaning of California Health & Safety Code § 25249.11.

20 12. Defendant BABY BOOM CONSUMER PRODUCTS INC. ("BABY BOOM") is  
21 a person in the course of doing business within the meaning of California Health & Safety Code  
22 § 25249.11.

23 13. Defendant MITZI INTERNATIONAL HANDBAGS & ACCESSORIES, LTD.  
24 ("MITZI") is a person in the course of doing business within the meaning of California Health  
25 & Safety Code § 25249.11.

26 14. Defendant THE BETESH GROUP ("BETESH") is a person in the course of  
27 doing business within the meaning of California Health & Safety Code § 25249.11.  
28

1           15. Defendant MOTION SYSTEMS manufactures, distributes, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
3 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
4 California.

5           16. Defendant BABY BOOM manufactures, distributes, and/or offers the  
6 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
7 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
8 California.

9           17. Defendant MITZI manufactures, distributes, and/or offers the PRODUCTS for  
10 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,  
11 and/or offers the PRODUCTS for sale or use in the State of California.

12           18. Defendant BETESH manufactures, distributes, and/or offers the PRODUCTS for  
13 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,  
14 and/or offers the PRODUCTS for sale or use in the State of California.

15           19. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
16 persons in the course of doing business within the meaning of California Health & Safety Code  
17 § 25249.11.

18           20. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
19 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
20 engage in the process of research, testing, designing, assembling, fabricating, and/or  
21 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

22           21. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
23 in the course of doing business within the meaning of California Health & Safety Code §  
24 25249.11.

25           22. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
26 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
27 in the State of California.



1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

5 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
6 Paragraphs 1 through 29, inclusive.

7 31. The citizens of the State of California have expressly stated in the Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*  
9 that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
10 other reproductive harm." (Cal. Health & Safety Code, § 25249.6.)

11 32. Proposition 65 states, "[n]o person in the course of doing business shall  
12 knowingly and intentionally expose any individual to a chemical known to the state to cause  
13 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
14 individual..." (*Ibid.*)

15 33. On or about April 8, 2011, plaintiff's sixty-day notice of violation, together with  
16 the requisite certificate of merit, was provided to MOTION SYSTEMS, BABY BOOM, MITZI,  
17 BETESH and various public enforcement agencies stating that, as a result of the  
18 DEFENDANTS' sales of handbags and cases for mobile electronic devices, purchasers and  
19 users in the State of California were being exposed to the LISTED CHEMICAL resulting from  
20 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
21 first having been provided with a "clear and reasonable warning" regarding such toxic  
22 exposures.

23 34. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
24 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
25 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
26 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
27 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
28

1 believes that such violations will continue to occur into the future.

2 35. After receipt of the claims asserted in the sixty-day notice of violation, the  
3 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
4 cause of action against DEFENDANTS under Proposition 65.

5 36. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
6 California by DEFENDANTS contained the LISTED CHEMICAL in amounts above the  
7 allowable state limits.

8 37. DEFENDANTS knew or should have known that the PRODUCTS they  
9 manufactured, distributed, and/or offered for sale or use in California contained the LISTED  
10 CHEMICAL.

11 38. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
12 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
13 during the reasonably foreseeable use of the PRODUCTS.

14 39. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
15 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
16 defined by Title 27 California Code of Regulations ("CCR") § 25602(b).

17 40. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
18 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
19 and/or ingestion.

20 41. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
21 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
22 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
23 sale or use to individuals in the State of California.

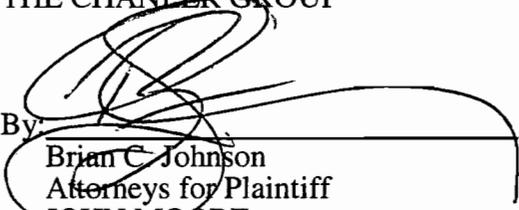
24 42. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
25 consumers and/or other individuals in the State of California who were or who could become  
26 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
27 reasonably foreseeable use of the PRODUCTS.  
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1           4.     That the Court grant such other and further relief as may be just and proper.

2  
3     Dated: July 5, 2011

Respectfully Submitted,  
THE CHANLER GROUP

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5           By:   
6           Brian C. Johnson  
7           Attorneys for Plaintiff  
8           JOHN MOORE