1 2 3 4 5 6	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	APR 1.5 2010 KIM TURNER, Cour, Executive Officer MARIN COUNTY SUPERIOR COURT (7) K. Main, Liepur)	
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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	FOR THE CO	FOR THE COUNTY OF MARIN	
10	UNLIMITED CIVIL JURISDICTION		
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12	JOHN MOORE,	Case No. CIV 1001952	
13	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES	
14	v.	AND INJUNCTIVE RELIEF	
15	THE WET SEAL, INC.; and DOES 1-150, inclusive,	(Cal. Health & Safety Code § 25249.6 et seq.)	
16	Defendants.	(com realist & sujety code (252 17.10 et seq.)	
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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

NATURE OF THE ACTION

- 1. This Complaint is a representative action brought by plaintiff JOHN MOORE, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of di(2-ethylhexyl)phthalate, a toxic chemical found in vinyl bags that appeal to children sold in California.
- 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failures to warn California citizens about their exposure to di(2-ethylhexyl)phthalate present in and/or on certain vinyl keychains that defendant manufactures, distributes, and/or offers for sale to consumers throughout the State of California.
- 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and/or on certain vinyl keychains that defendant manufactures, distributes, and/or offers for sale to consumers throughout the State of California.
- 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.6 et seq. (Proposition 65), "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . ." (Cal. Health & Safety Code § 25249.6.)
- 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001; Cal. Health & Safety Code § 25249.8.)
- 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the "LISTED CHEMICAL."
- 7. Defendant manufactures, distributes, and/or sells vinyl keychains containing excessive levels of the LISTED CHEMICAL including, but not limited to, *One Bad Apple*

Keychain, Style No.40992792 (#4 09928 00000 8). All such vinyl keychains containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

- 8. Defendant's failures to warn consumers and/or other individuals in the State of California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinment of such conduct as well as civil penalties for each such violation.
- 9. For defendant's violations of Proposition 65, plaintiff seeks preliminary injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL. (Cal. Health & Safety Code § 25249.7(a).)
- 10. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

PARTIES

- 11. Plaintiff JOHN MOORE, is a citizen of the City and County of Sacramento in the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code Section 25249.7.
- 12. Defendant WET SEAL, INC. ("WET SEAL") is a person doing business within the meaning of California Health & Safety Code Section 25249.11.
- 13. Defendant WET SEAL manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.
- 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.
- 15. MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

engage in the process of research, testing, designing, assembling, fabricating and	or/
manufacturing, one or more of the PRODUCTS for sale or use in the State of Cal	ifornia

- 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.
- 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California.
- 18. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.
- 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.
- 20. At this time, the true names of Defendants DOES 1-150, inclusive, are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.
- 21. WET SEAL, MANUFACTURER DEFENDANTS, DISTRIBUTOR

 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS."

VENUE AND JURISDICTION

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

- 23. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.
- 24. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation, or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 – Against All Defendants)

- 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 24, inclusive.
- 26. The citizens of the State of California have expressly stated in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5, et seq. (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth defects and other reproductive harm." (Cal. Health & Safety Code § 25249.6.)
- 27. Proposition 65 states, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual..."

 (Id.)
- 28. On December 15, 2009 sixty-day notices of violation, together with the requisite certificate of merit, were provided to WET SEAL and various public enforcement agencies stating that as a result of DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first

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

- 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of Violation. Plaintiff further alleges and believes that such violations will continue to occur into the future.
- 30. After receipt of the claims asserted in the 60-Day Notice of Violation, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.
- 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state limits.
- 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED CHEMICAL.
- 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.
- 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section 25602(b).
- 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion.

- 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture, distribution, and/or offer for sale or use of PRODUCTS to individuals in the State of California.
- 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and/or other individuals in the State of California who were or who could become exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.
- 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy, or adequate remedy at law.
- 39. As a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California Health & Safety Code Section 25249.7(b).
- 40. As a consequence of the above-described acts, California Health & Safety Code Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.
- 41. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth hereinafter.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

Dated: April 42010

- 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
- 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED CHEMICAL:
 - 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
 - 4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

THE CHANLER GROUP

Daniel Bornstein
Attorneys for Plaintiff
JOHN MOORE