

FILED

MAY 17 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 BODY-SOLID, INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. CIV 1102485

**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 exercise balls sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain exercise balls that
8 defendant manufactures, imports, distributes, and/or offer for sale to consumers throughout the
9 State of California.

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

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendant BODY-SOLID, INC. (“BODY-SOLID” or “Defendant”) manufactures,
21 imports, distributes, and/or sells exercise balls containing DEHP including, but not limited to,
22 *Body-Solid Tools Anti-Burst Exercise Ball, #BSTSB45 (#6 38448 00299 9).*

23 6. All such exercise balls containing DEHP, shall hereinafter be collectively referred
24 to as the “PRODUCTS.”

1 28. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
2 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
3 § 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
4 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
5 continued to occur beyond BODY-SOLID's receipt of plaintiff's Notice. Plaintiff further alleges
6 and believes that such violations will continue to occur into the future.

7 29. After receipt of the claims asserted in the Notice, the appropriate public
8 enforcement agencies have failed to commence and diligently prosecute a cause of action against
9 DEFENDANTS under Proposition 65.

10 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
11 use in California by DEFENDANTS contained DEHP above the allowable state limits.

12 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
13 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
14 DEHP.

15 32. DEHP was present in or on the PRODUCTS in such a way as to expose
16 individuals to DEHP through dermal contact and ingestion during the reasonably foreseeable use
17 of the PRODUCTS.

18 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
19 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
20 27 California Code of Regulations ("CCR") § 25602(b).

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
22 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

23 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
24 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
25 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
26 individuals in the State of California.

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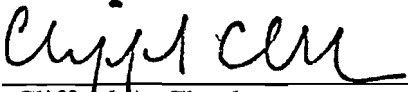
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: May 17, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 
Clifford A. Chanler
Attorneys for Plaintiff
JOHN MOORE