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

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

14 JOHN MOORE,
15 Plaintiff,
16 v.
17 AGE GROUP LTD.; and DOES 1-150,
18 inclusive,
19 Defendants.

Case No. CIV 1102261

**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-n-butyl phthalate (“DBP”), a toxic chemical found in footwear
5 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 DBP, present in or on certain footwear that defendant
8 manufactures, imports, distributes, and/or offers for sale to consumers and businesses throughout
9 the 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 December 2, 2005, California identified and listed DBP as a chemical known
16 to cause birth defects and other reproductive harm. DBP 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 December 2, 2006. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code §§ 25249.8 & 25249.10(b).*)

20 5. Defendant AGE GROUP LTD. (“AGE GROUP” or “Defendant”) manufactures,
21 imports, distributes, and/or sells footwear containing DBP including, but not limited to, *Hello*
22 *Kitty Flip Flops, SIL-34012.*

23 6. All such footwear containing DBP, shall hereinafter be collectively referred to as
24 the “PRODUCTS.”

1 manufacturing, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or
2 use in the State of California.

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

5 16. 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 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
9 doing business within the meaning of California Health & Safety Code § 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California and, in some circumstances, may also be manufacturers and/or distributors.

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

17 20. AGE GROUP, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to hereinafter as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

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

1 purchasers and users first having been provided with a “clear and reasonable warning” regarding
2 such toxic exposures.

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

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

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

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

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

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

23 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to DBP through dermal contact and ingestion.

25 35. DEFENDANTS intended that such exposures to DBP from the reasonably
26 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
27
28

1 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
2 individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the State of California who were or who could become
5 exposed to DBP through dermal contact and ingestion during the reasonably foreseeable use of
6 the PRODUCTS.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
8 directly by California voters, individuals exposed to DBP through dermal contact and ingestion,
9 resulting from the reasonably foreseeable use of the PRODUCTS, sold by
10 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
11 irreparable harm, for which harm they have no plain, speedy, or adequate remedy at law.

12 38. As a consequence of the above-described acts, DEFENDANTS are liable for a
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
14 Safety Code § 25249.7(b).

15 39. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

20 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
22 herein;

23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
25 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
26 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to DBP;

