

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”) and di-n-butyl (“DBP”), a toxic
5 chemical found in footwear sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about their exposure to DEHP and DBP present in or on footwear that
8 defendants manufacture, import, distribute, 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”), “[n]o person in the course
12 of doing business shall knowingly and intentionally expose any individual to a chemical known to
13 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
14 to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known to
16 cause birth defects and other reproductive harm. DEHP became subject to the “clear and
17 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit. 27
18 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).)

19 5. On December 2, 2005, California identified and listed DBP as a chemical known to
20 cause birth defects and other reproductive harm. DBP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on December 2, 2006. (Tit. 27
22 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).)

23 6. DEHP and DBP shall be referred to hereinafter as the “LISTED CHEMICALS.”

24 7. Defendants manufacture, import, distribute, and/or sell footwear containing the
25 LISTED CHEMICALS including, but not limited to, *The Simpsons 20 Years Flip-Flops, Item*
26 *#176767 (#7 01570 00554 8)*. All such footwear containing the LISTED CHEMICALS shall
27 hereinafter be referred to as the “PRODUCTS.”

28 8. Defendants’ failure to warn consumers and/or other individuals in the State of

1 California about their exposure to the LISTED CHEMICALS in conjunction with defendants'
2 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of
3 such conduct as well as civil penalties for each such violation.

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

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

10 **PARTIES**

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

15 12. Defendant, E & E HOSIERY, INC. ("E & E"), is a person in the course of doing
16 business within the meaning of California Health & Safety Code § 25249.11.

17 13. Defendant E & E manufactures, distributes, and/or offers the PRODUCTS for sale
18 or use in the State of California, or implies by its conduct that it manufactures, distributes, and/or
19 offers the PRODUCTS for sale or use in the State of California.

20 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
21 in the course of doing business within the meaning of California Health & Safety Code §
22 25249.11.

23 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
24 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
25 engage in the process of research, testing, designing, assembling, fabricating, and/or
26 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

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

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

4 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in
5 the course of doing business within the meaning of California Health & Safety Code § 25249.11.

6 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
7 State of California.

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

13 21. E & E, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
14 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
15 "DEFENDANTS."

16 VENUE AND JURISDICTION

17 22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
18 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, and
19 because one or more instances of wrongful conduct occurred, and continue to occur, in the
20 County of San Francisco, and/or because DEFENDANTS conducted, and continue to conduct,
21 business in this County with respect to the PRODUCTS.

22 23. The California Superior Court has jurisdiction over this action pursuant to
23 California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in
24 all causes except those given by statute to other trial courts." The statute under which this action
25 is brought does not specify any other basis of subject matter jurisdiction.

26 24. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
28 association that is a citizen of the State of California, has sufficient minimum contacts in the State

1 of California, or otherwise purposefully avails itself of the California market. DEFENDANTS'
2 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
3 with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

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

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

16 28. On or about November 12, 2010, a sixty-day notice of violation, together with the
17 requisite certificate of merit, was provided to E & E and various public enforcement agencies
18 stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
19 the State of California were being exposed to the LISTED CHEMICAL resulting from the
20 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
21 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

22 29. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
23 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
24 § 25249.6 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for
25 sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur
26 beyond DEFENDANTS’ receipt of Plaintiff’s sixty-day notice of violation. Plaintiff further
27 alleges and believes that such violations will continue to occur into the future.

28 30. After receipt of the claims asserted in the sixty-day notice of violation, the

1 appropriate public enforcement agencies have failed to commence and diligently prosecute a
2 cause of action against DEFENDANTS under Proposition 65.

3 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
4 California by DEFENDANTS contained the LISTED CHEMICALS above the allowable state
5 limits.

6 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
8 the LISTED CHEMICALS.

9 33. The LISTED CHEMICALS was present in or on the PRODUCTS in such a way as
10 to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
11 during the reasonably foreseeable use of the PRODUCTS.

12 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
13 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposure is
14 defined by Title 27 CCR § 25602(b).

15 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
16 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal contact
17 and/or ingestion.

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

22 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
23 consumers and/or other individuals in the State of California who were or who could become
24 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
25 reasonably foreseeable use of the PRODUCTS.

26 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by

1 DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer,
2 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

6 40. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

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

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

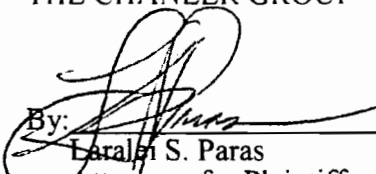
14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
17 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposure the LISTED
18 CHEMICALS;

19 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

20 4. That the Court grant such other and further relief as may be just and proper.

21
22 Dated: April 18, 2011

Respectfully Submitted,
THE CHANLER GROUP

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25 By: 
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JOHN MOORE