

JUN 20 2011

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1 Clifford A. Chanler, State Bar No. 135534  
2 Brian C. Johnson, State Bar No. 235965  
3 Josh Voorhees, State Bar No. 241436  
4 THE CHANLER GROUP  
5 2560 Ninth Street  
6 Parker Plaza, Suite 214  
7 Berkeley, CA 94710-2565  
8 Telephone: (510) 848-8880  
9 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
7 JOHN MOORE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION

11  
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 IN GEAR FASHIONS, INC.; and DOES 1-  
16 150, inclusive,

17 Defendants.

Case No. \_\_\_\_\_

CGC-11-511834

**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”) and di-n-butyl phthalate  
5 (“DBP”), toxic phthalate chemicals found in footwear 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 and DBP present in or on footwear  
8 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of  
9 California.

10 3. High levels of DEHP and DBP are commonly found in and on the footwear that  
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
12 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).)

22 6. On December 2, 2005, California identified and listed DBP as a chemical known  
23 to cause birth defects and other reproductive harm. DBP became subject to the “clear and  
24 reasonable warning” requirements of Proposition 65 one year later on December 2, 2006. (Tit.  
25 27 Cal. Code Regs., § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 & 25249.10(b).)  
26 DEHP and DBP shall be referred to collectively as the “LISTED CHEMICALS.”

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1 7. Defendants manufacture, distribute, and/or sell footwear containing excessive  
2 levels of DEHP and DBP, including, but not limited to, the *Blue Aqua Flip Flops, L10F212C*  
3 (*#6 75220 36791 4*). All such footwear containing DEHP and DBP shall hereinafter  
4 collectively be referred to as the “PRODUCTS.”

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

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

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

15 **PARTIES**

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

20 12. Defendant, IN GEAR FASHIONS, INC. (“IN GEAR”), is a person in the course  
21 of doing business within the meaning of California Health & Safety Code § 25249.11.

22 13. Defendant IN GEAR manufactures, distributes, and/or offers the PRODUCTS for  
23 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,  
24 and/or offers the PRODUCTS for sale or use in the State of California.

25 14. Defendants, DOES 1-50 (“MANUFACTURER DEFENDANTS”), are each  
26 persons in the course of doing business within the meaning of California Health & Safety Code  
27 § 25249.11.



1 County of San Francisco, and/or because DEFENDANTS conducted, and continue to conduct,  
2 business in this County with respect to the PRODUCTS.

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

7 24. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
9 association that is a citizen of the State of California, has sufficient minimum contacts in the  
10 State of California, or otherwise purposefully avails itself of the California market.  
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

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

17 26. The citizens of the State of California have expressly stated in the Safe Drinking  
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*  
19 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
20 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

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

25 28. On or about March 31, 2011, plaintiff’s sixty-day notice of violation, together  
26 with the requisite certificate of merit, was provided to IN GEAR and various public  
27 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of footwear,  
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1 purchasers and users in the State of California were being exposed to the LISTED  
2 CHEMICALS resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
3 individual purchasers and users first having been provided with a “clear and reasonable  
4 warning” regarding such toxic exposures.

5 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
6 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
7 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
8 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
9 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and  
10 believes that such violations will continue to occur into the future.

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

14 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
15 California by DEFENDANTS contained the LISTED CHEMICALS in amounts above the  
16 allowable state limits.

17 32. DEFENDANTS knew or should have known that the PRODUCTS they  
18 manufactured, distributed, and/or offered for sale or use in California contained the LISTED  
19 CHEMICALS.

20 33. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way  
21 as to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion  
22 during the reasonably foreseeable use of the PRODUCTS.

23 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
24 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are  
25 defined by Title 27 California Code of Regulations (“CCR”) § 25602(b).

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

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

8 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
9 consumers and/or other individuals in the State of California who were or who could become  
10 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the  
11 reasonably foreseeable use of the PRODUCTS.

12 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
13 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal  
14 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
15 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to  
16 suffer, irreparable harm, for which they have no plain, speedy, or adequate remedy at law.

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

20 40. As a consequence of the above-described acts, California Health & Safety Code  
21 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
22 DEFENDANTS.

23 **PRAYER FOR RELIEF**

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

25 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
26 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
27 alleged herein;  
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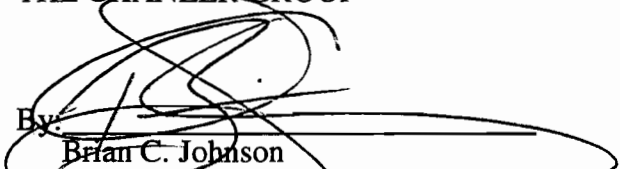
1           2.     That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
3 offering the PRODUCTS for sale or use in California without first providing “clear and/or  
4 reasonable warnings” as defined by Title 27 CCR § 25601, as to the harms associated with  
5 exposure the LISTED CHEMICALS;

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

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

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9 Dated: June 17, 2011

Respectfully Submitted,  
THE CHANLER GROUP

10  
11 By:   
12 Brian C. Johnson  
13 Attorneys for Plaintiff  
14 JOHN MOORE