



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 cases  
5 for digital cameras 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 cases for digital  
8 cameras that defendant manufactures, imports, distributes, and/or offer for sale to consumers  
9 throughout 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 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 MERKURY INNOVATIONS LLC (“MERKURY” or “Defendant”)  
21 manufactures, imports, distributes, and/or sells cases for digital cameras containing DEHP  
22 including, but not limited to, *Targus Universal Digital Camera Starter Kit, TGK-FR300 (#8*  
23 *44702 00128 2).*

24 6. All such cases for digital cameras containing DEHP, shall hereinafter be  
25 collectively referred to as the “PRODUCTS.”



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

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

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

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

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

15 20. MERKURY, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
16 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
17 referred to hereinafter as “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

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

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

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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 MERKURY'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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- 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: August 17, 2011

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Troy C. Bailey  
Attorneys for Plaintiff  
JOHN MOORE