

**ENDORSED
FILED**

San Francisco County Superior Court

SEP 19 2011

CLERK OF THE COURT

BY: PARAM NATT
Deputy Clerk

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar. No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 JOHN MOORE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

CGC-11-514337

12 JOHN MOORE,

13 Plaintiff,

14 v.

16 MARC FISHER LLC; GUESS ?, INC.; and
DOES 1-150, inclusive,

17 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code. § 25249.6 *et seq.*)

21
22
23
24
25
26
27
28
BY FAX

NATURE OF THE ACTION

1
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 defendants’ continuing failure to
7 warn California citizens about reproductive harms associated with their exposure to DBP
8 present in or on footwear that defendants manufacture, distribute, and/or offer for sale to
9 consumers throughout the state of California.

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

12 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
14 course of doing business shall knowingly and intentionally expose any individual to a chemical
15 known to the state to cause cancer or reproductive toxicity without first giving clear and
16 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

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

22 6. Defendants manufacture, distribute, and/or offer for sale footwear containing DBP
23 including, but not limited to, the *Guess Sandals, GWECLIPSIS, (#8 84427 97550 5)* and the
24 *Guess Sandals, WGFUNKEE2, (#8 86113 44648 1)*. All such footwear containing DBP shall
25 hereinafter be referred to as the “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and/or other individuals in the state of
27 California not covered by California’s Occupational Safety Health Act, Labor Code section
28 6300 *et seq.* about their exposure to DBP and its potential to cause birth defects and other

1 reproductive harm in conjunction with defendants' sale of the PRODUCTS is a violation of
2 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties
3 for each such violation.

4 8. 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 DBP. (Cal. Health &
7 Safety Code § 25249.7(a).)

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

10 PARTIES

11 10. 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
13 exposures from consumer products; he brings this action in the public interest pursuant to
14 California Health & Safety Code section 25249.7(d).

15 11. Defendant MARC FISHER LLC ("FISHER") is a person in the course of doing
16 business within the meaning of California Health & Safety Code section 25249.11.

17 12. Defendant FISHER manufactures, distributes, and/or offers the PRODUCTS for
18 sale or use in the state of California, or implies by its conduct that it manufactures, distributes,
19 and/or offers the PRODUCTS for sale or use in the state of California.

20 13. Defendant GUESS ?, INC. ("GUESS") is a person in the course of doing business
21 within the meaning of California Health & Safety Code section 25249.11.

22 14. Defendant GUESS 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 15. 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 section 25249.11.

28

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

3 24. 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 25. 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,
9 or 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 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 25, inclusive.

17 27. 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 section 25249.6 *et*
19 *seq.* that they must be informed “about exposures to chemicals that cause cancer, birth defects
20 and other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

21 28. 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 29. On or about May 11, 2011, a sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to FISHER, GUESS, and various public enforcement
27 agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers
28 and users in the state of California were being exposed to DBP resulting from the reasonably

1 foreseeable use of the PRODUCTS without the individual purchasers and users first having
2 been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

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

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

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

19 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause, consumer exposures to DBP, as such exposure is defined by Title 27 CCR
21 section 25602(b).

22 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
23 the PRODUCTS would expose individuals to DBP through dermal contact and/or ingestion.

24 37. DEFENDANTS intended that such exposures to DBP from the reasonably
25 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
26 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
27 individuals in the state of California.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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: September 13, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 
 Josh Voorhees
 Attorneys for Plaintiff
 JOHN MOORE