

FILED

JUL 25 2011

KIM TURNER  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Frasier, Deputy

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

10 Attorneys for Plaintiff  
11 JOHN MOORE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 THE WALT DISNEY COMPANY; and  
19 DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 1103670

**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”), a toxic chemical found in  
5 keychains 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 present in or on keychains  
8 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of  
9 California.

10 3. High levels of DEHP are commonly found in and on the keychains 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. (Tit.  
21 27 Cal. Code Regs. (“CCR”), § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 &  
22 25249.10(b).) DEHP shall be referred to hereinafter as the “LISTED CHEMICAL”.

23 6. Defendants manufacture, distribute, and/or sell keychains containing excessive  
24 levels of DEHP, including, but not limited to, *ESPN Keychain (#4 00118 05053 7)*. All such  
25 items shall hereinafter collectively be referred to as the “PRODUCTS.”

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

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

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

9 **PARTIES**

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

14 11. Defendant THE WALT DISNEY COMPANY ("DISNEY") is a person in the  
15 course of doing business within the meaning of California Health & Safety Code § 25249.11.

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

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

22 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
23 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
24 engage in the process of research, testing, designing, assembling, fabricating, and/or  
25 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.  
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1 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
2 in the course of doing business within the meaning of California Health & Safety Code §  
3 25249.11.

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

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

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

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 names 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 alleged  
16 herein. When ascertained, their true names shall be reflected in an amended complaint.

17 20. DISNEY, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to 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 continue to occur, in Marin County,  
24 and/or because DEFENDANTS conducted, and continue to conduct, business in this county  
25 with respect to the PRODUCTS.

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

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

9 **FIRST CAUSE OF ACTION**

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

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 23, inclusive.

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

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

21 27. On or about May 11, 2011, plaintiff’s sixty-day notice of violation, together with  
22 the requisite certificate of merit, was provided to DISNEY and various public enforcement  
23 agencies stating that, as a result of the DEFENDANTS’ sales of keychains, purchasers and users  
24 in the State of California were being exposed to the LISTED CHEMICAL resulting from the  
25 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
26 first having been provided with a “clear and reasonable warning” regarding such toxic  
27 exposures.  
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1           28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
3 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
4 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
5 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
6 believes that such violations will continue to occur into the future.

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

10          30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
11 California by DEFENDANTS contained the LISTED CHEMICAL in amounts above the  
12 allowable state limits.

13          31. DEFENDANTS knew or should have known that the PRODUCTS they  
14 manufactured, distributed, and/or offered for sale or use in California contained the LISTED  
15 CHEMICAL.

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

19          33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
20 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
21 defined by Tit. 27 CCR § 25602(b).

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

25          35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
26 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
2 sale or use to 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 the LISTED CHEMICAL through dermal contact and/or ingestion during the  
6 reasonably foreseeable use of the PRODUCTS.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
9 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
10 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
11 suffer, irreparable harm, for which 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  
22 alleged 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 first providing “clear and/or  
26 reasonable warnings” as defined by Tit. 27 CCR § 25601, as to the harms associated with  
27 exposure the LISTED CHEMICAL;

- 1           3.     That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and  
2           4.     That the Court grant such other and further relief as may be just and proper.

3  
4     Dated: July 25 2011

Respectfully Submitted,  
THE CHANLER GROUP

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6           By:   
7           Brian C. Johnson  
8           Attorneys for Plaintiff  
9           JOHN MOORE

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