

ENDORSED
FILED
ALAMEDA COUNTY

JUL 24 2012

CLERK OF THE SUPERIOR COURT
By C. ROBERTS Deputy

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JOHN MOORE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

12 JOHN MOORE,

13 Plaintiff,

14 v.

15 NORTH WALK, LTD.; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. HC 12640481

**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-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 their exposure to DBP present in or on footwear that defendants
8 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

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

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

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

21 6. Defendants manufacture, distribute, and/or offer for sale footwear containing
22 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Fun Flip-Flops*
23 (*#6 19649 15277 5*). All such footwear containing the LISTED CHEMICAL shall hereinafter
24 be referred to as the “PRODUCTS.”

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

1 association that is a citizen of the State of California, has sufficient minimum contacts in the
2 State of California, or otherwise purposefully avails itself of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

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

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

17 27. On or about October 28, 2011, a sixty-day notice of violation, together with the
18 requisite certificate of merit, was provided to NORTH WALK and various public enforcement
19 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers
20 and users in the State of California were being exposed to DBP resulting from the reasonably
21 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
22 been provided with a "clear and reasonable warning" regarding such toxic exposures.

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

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

4 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contained the LISTED CHEMICAL in an amount above the
6 allowable state limits.

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

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

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

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

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

22 36. 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 CHEMICAL through dermal contact and/or ingestion during the
25 reasonably foreseeable use of the PRODUCTS.

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

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

3 38. 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 39. 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;

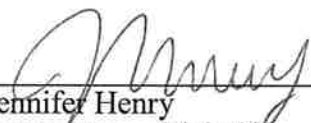
14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
17 warnings” as defined by 27 CCR § 25601,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

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: July 19, 2012

Respectfully Submitted,
THE CHANLER GROUP

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25 By: 
Jennifer Henry
Attorneys for Plaintiff
JOHN MOORE
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