

1 Christopher M. Martin, State Bar No. 186021
Josh Voorhees, State Bar No. 241436
2 Stephen E. Cohen, State Bar No. 284416
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
JOHN MOORE
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ALAMEDA COUNTY
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Deputy

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

12 JOHN MOORE,
13 Plaintiff,
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15 v.
16 G.H. MEISER & CO.; and DOES 1-150,
inclusive,
17 Defendants.
18

Case No. **RG13696555**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Cal. Health & Safety Code. § 25249.6 *et seq.*)

BY FAX

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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 lead and di(2-ethylhexyl)phthalate (“DEHP”), toxic chemicals
5 found in tire deflators sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive toxicity associated with their exposure to lead and
8 DEHP present in or on certain tire deflators that defendants manufacture, import, distribute,
9 and/or offer for sale to consumers throughout the State of California.

10 3. High levels of lead and DEHP are commonly found in and on the tire deflators
11 that defendants manufacture, import, distribute, and/or offer for sale to consumers throughout
12 the State of 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”), “[n]o person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the State to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

18 5. On February 27, 1987, California identified and listed lead as a chemical known
19 to cause birth defects and other reproductive harm. Lead became subject to the warning
20 requirement one year later and was therefore subject to the “clear and reasonable warning”
21 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*
22 *Health & Safety Code § 25249.8.*)

23 6. On October 24, 2003, California identified and listed DEHP as a chemical known
24 to cause birth defects and other reproductive harm. DEHP became subject to the warning
25 requirement one year later and was therefore subject to the “clear and reasonable warning”
26 requirements of Proposition 65 beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
27 *Health & Safety Code § 25249.8.*) Lead and DEHP are hereinafter referred to as the “LISTED
28 CHEMICALS.”

1 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
2 persons in the course of doing business within the meaning of California Health & Safety Code
3 § 25249.11.

4 15. MANUFACTURER DEFENDANTS engage in the process of researching,
5 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
6 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
7 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

8 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
9 in the course of doing business within the meaning of California Health & Safety Code §
10 25249.11.

11 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
13 in the State of California.

14 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
15 the course of doing business within the meaning of California Health & Safety Code §
16 25249.11.

17 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

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

24 21. G.H. MEISER, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

2 22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
4 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
5 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
6 County with respect to the PRODUCTS.

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

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

1 28. On or about July 5, 2013, a sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to G.H. MEISER and various public enforcement
3 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers
4 and users in the State of California were being exposed to the LISTED CHEMICALS resulting
5 from the reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
6 users first having been provided with a "clear and reasonable warning" regarding such toxic
7 exposures.

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

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

17 31. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
18 use in California by DEFENDANTS contained the LISTED CHEMICALS in an amount above
19 the allowable State limits.

20 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
21 imported, distributed, and/or offered for sale or use in California contained the LISTED
22 CHEMICALS.

23 33. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
24 to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
25 during the reasonably foreseeable use of the PRODUCTS.

26 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
27 continues to cause, consumer and workplace exposures to the LISTED CHEMICALS, as such
28 exposure is defined by Title 27 CCR § 25602(b).


1 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
3 distributing, and/or offering the PRODUCTS for sale or use in California, without providing
4 “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with
5 exposure to 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.

8 Dated: September 20 2013

Respectfully Submitted,
THE CHANLER GROUP

11 By: 
12 Stephen E. Cohen
13 Attorneys for Plaintiff
14 JOHN MOORE

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