

1 Josh Voorhees, State Bar No. 241436  
2 Christopher Tuttle, State Bar No. 264545  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 MARK MOORBERG

ENDORSED

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Date:                                                                 
County of Santa Clara, California

By                      J. CAO-NGUYEN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

MARK MOORBERG,

Plaintiff,

v.

DIRECT SOURCE INTERNATIONAL INC.;  
and DOES 1-150, inclusive,

Defendants.

Case No. **114CV269540**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff MARK  
3 MOORBERG in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed about exposures to di-n-butyl phthalate (“DBP”), a toxic chemical  
5 that is found in and on the vinyl/PVC straps of flip flops that are sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risks of exposures to DBP present in and on the vinyl/PVC  
8 straps of flip flops manufactured, distributed, and offered for sale or use to consumers  
9 throughout the State of California.

10 3. Detectable levels of DBP are commonly found in and on the vinyl/PVC straps of  
11 flip flops that defendants import, manufacture, distribute, ship, sell and/or offer for sale to  
12 consumers throughout the State of California.

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

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

22 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
23 warning in California, flip flops with vinyl/PVC straps containing DBP, including, but not  
24 limited to, the *Flip Flop*, #61539283A, UPC #0 43748 12097 5. All such flip flops with  
25 vinyl/PVC straps containing DBP are referred to collectively hereinafter as the “PRODUCTS.”  
26 DBP is referred to hereinafter as the “LISTED CHEMICAL.”





1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
2 wrongful conduct occurred, and continue to occur, in this county, and/or because  
3 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with  
4 respect to the PRODUCTS.

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

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

15 **FIRST CAUSE OF ACTION**

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

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

19 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
20 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
21 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
22 harm.”

23 26. Proposition 65 states, “[n]o person in the course of doing business shall  
24 knowingly and intentionally expose any individual to a chemical known to the state to cause  
25 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
26 individual . . . .” Health & Safety Code § 25249.6.

1           27. On April 16, 2014, plaintiff's sixty-day notice of violation, together with the  
2 requisite certificate of merit, was provided to DIRECT SOURCE and certain public  
3 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS  
4 containing the LISTED CHEMICAL, workers, consumers, and other individuals in the State of  
5 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
6 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
7 received a "clear and reasonable warning" regarding such toxic exposures, as required by  
8 Proposition 65.

9           28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
10 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
11 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of  
12 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and  
13 continuous in nature, and will continue to occur in the future.

14           29. After receiving plaintiff's sixty-day notice of violation, the appropriate public  
15 enforcement agencies have failed to commence and diligently prosecute a cause of action  
16 against DEFENDANTS under Proposition 65.

17           30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
18 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
19 reasonably foreseeable uses of these products result in exposures that require a "clear and  
20 reasonable" warning under Proposition 65.

21           31. DEFENDANTS knew or should have known that the PRODUCTS they  
22 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
23 CHEMICAL.

24           32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
25 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.  
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1           33.    The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
2 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
3 defined by title 27 of the California Code of Regulations, section 25602(b).

4           34.    DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
5 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
6 and/or ingestion.

7           35.    DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
8 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental  
9 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
10 use to individuals in the State of California.

11          36.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
12 workers, consumers and other individuals in California not covered by California’s  
13 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,  
14 exposed to the LISTED CHEMICAL.

15          37.    Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
16 directly by California voters, workers, consumers, and other individuals exposed to the LISTED  
17 CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable  
18 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”  
19 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
20 adequate remedy at law.

21          38.    Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
22 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
23 for each violation.

24          39.    As a consequence of the above-described acts, Health and Safety Code  
25 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
26 DEFENDANTS.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
4 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
5 each violation;

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California without first providing a “clear and  
9 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
10 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

11 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

12 4. That the Court grant such other and further relief as may be just and proper.

13 Dated: August 14, 2014

14 Respectfully Submitted,  
15 THE CHANLER GROUP

16  
17 By:  \_\_\_\_\_  
18 Christopher Tuttle, Esq.  
19 Attorneys for Plaintiff  
20 MARK MOORBERG  
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