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ENDORSED
FILED
ALAMEDA COUNTY

DEC 10 2014
CLERK OF THE SUPERIOR COURT
By _____ Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 IZZO GOLF, INC.; DICK'S SPORTING
15 GOODS, INC., INC., and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. RG 14751002

**COMPLAINT
FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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2 1. This Complaint is a representative action brought by plaintiff John Moore, in the
3 public interest of the citizens of the State of California to enforce the People’s right to be informed
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in consumer products
5 such as vinyl/PVC golf ball retriever grips sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about the risks of exposure to DEHP present in and on vinyl/PVC golf ball
8 retriever grips manufactured, distributed, and offered for sale or use to consumers throughout the
9 State of California.

10 3. Detectable levels of DEHP are commonly found in and on vinyl/PVC golf ball
11 retriever grips that defendants manufacture, sell, and distribute for sale to consumers throughout the
12 State of California.

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

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 7. Significant levels of the LISTED CHEMICAL have been discovered in or on the
24 vinyl/PVC golf ball retriever grips that are manufactured, imported, distributed, and/or sold by
25 defendants.

26 8. Examples of vinyl/PVC golf ball retriever grips containing the LISTED CHEMICAL
27 that are manufactured, imported, distributed and/or sold by defendants are contained in the *Callaway*
28 *15’ Retriever, C10400, UPC #6 89769 10400 8.*

1 18. Defendants DOES 1-150 are each persons in the course of doing business within the
2 meaning of Health and Safety Code § 25249.11(b), who manufacture, distribute, sell, and/or offer
3 the PRODUCTS for sale in the State of California. At this time, the true names and capacities of
4 defendants DOES 1 through 150, inclusive, are unknown to plaintiffs, who, therefore, sue said
5 defendants by their fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff is informed
6 and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible
7 for the acts and occurrences alleged herein. When ascertained, their true names and capacities shall
8 be reflected in an amended complaint.

9 19. IZZO, DICK'S SPORTING GOODS and DOES 1 through 150 shall, where
10 appropriate, collectively be referred to as "DEFENDANTS."

11 **VENUE AND JURISDICTION**

12 20. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
13 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
14 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful
15 conduct occurred, and continue to occur, in Alameda County, and/or because DEFENDANTS
16 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

17 21. The California Superior Court has jurisdiction over this action pursuant to California
18 Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all
19 causes except those given by statute to other trial courts." The statute under which this action is
20 brought does not specify any other basis of subject matter jurisdiction.

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

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1 **FIRST CAUSE OF ACTION**

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

3 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
4 1 through 22, inclusive.

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

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

12 26. On or about September 30, 2014, plaintiff’s sixty-day notice of violation, together with
13 the requisite certificate of merit, was provided to Izzo Golf, Inc., Dick’s Sporting Goods, Inc. and
14 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
15 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of California
16 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of
17 the PRODUCTS, without the individual purchasers and users first having been provided with a
18 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

19 27. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
20 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
21 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
22 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
23 will continue to occur in the future.

24 28. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
25 enforcement agencies have failed to commence and diligently prosecute a cause of action against
26 DEFENDANTS under Proposition 65.

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1 29. The PRODUCTS manufactured, imported, sold, and/or distributed for sale or use in
2 California by DEFENDANTS contain the LISTED CHEMICAL such that they require a “clear and
3 reasonable” warning under Proposition 65.

4 30. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
5 import, distribute, sell, and/or offer for sale or use in California contain the LISTED CHEMICAL.

6 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
7 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during their
8 reasonably foreseeable use.

9 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
10 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined
11 by title 27 of the California Code of Regulations, section 25602(b).

12 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the
13 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
14 ingestion.

15 34. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
16 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
17 participation in the manufacture, importation, distribution, sale, and/or offering of the PRODUCTS
18 for sale or use to individuals in the State of California.

19 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
20 and other individuals in the State of California who were or who would become exposed to the
21 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable
22 uses of the PRODUCTS.

23 36. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
24 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
25 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
26 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
27 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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