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Laralei Paras, State Bar No. 203319  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

Attorneys for Plaintiff  
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,  
Plaintiff,

v.

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

Case No. RG14751002

**FIRST AMENDED  
COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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NATURE OF THE ACTION

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

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

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

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

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

6. DEHP is referred to hereinafter as the "LISTED CHEMICAL."

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

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

1 9. All such vinyl/PVC golf ball retriever grips identified in paragraphs 7 and 8 above,  
2 shall hereinafter be collectively referred to as the "VINYL GRIP PRODUCTS."

3 10. Significant levels of the LISTED CHEMICAL have been discovered in or on the  
4 vinyl/PVC bags that are manufactured, imported, distributed, and/or sold by defendants.

5 11. Examples of vinyl/PVC bags containing the LISTED CHEMICAL that are  
6 manufactured, imported, distributed and/or sold by defendants are contained in the *Callaway Golf*  
7 *Training Impact Bag, C10232, UPC #6 89769 10232 5.*

8 12. All such vinyl/PVC bags identified in paragraphs 10 and 11 above, shall hereinafter be  
9 collectively referred to as the "VINYL BAG PRODUCTS."

10 13. The VINYL GRIP PRODUCTS and VINYL BAG PRODUCTS are referred to  
11 collectively herein as the "PRODUCTS."

12 14. Defendants' failure to warn consumers and other individuals in the State of California  
13 about their exposure to the LISTED CHEMICAL in conjunction with defendants' sales of the  
14 VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS is a violation of Proposition 65, and  
15 subjects defendants to enjoinder of such conduct as well as civil penalties for each violation.  
16 Health & Safety Code § 25249.7(a) & (b)(1).

17 15. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
18 permanent injunctive relief to compel defendants to provide purchasers or users of the VINYL GRIP  
19 PRODUCTS and/or VINYL BAG PRODUCTS with the required warning regarding the health  
20 hazards of the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

21 16. Pursuant to Health & Safety Code § 25249.7(b), plaintiff also seeks civil penalties  
22 against defendants for their violations of Proposition 65.

23 **PARTIES**

24 17. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to  
25 protecting the health of California citizens through the elimination or reduction of toxic exposures  
26 from consumer products; and he brings this action in the public interest pursuant to Health & Safety  
27 Code § 25249.7(d).

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1 18. Defendant IZZO GOLF, INC. ("IZZO") is a person in the course of doing business  
2 within the meaning of Health & Safety Code § 25249.11.

3 19. IZZO manufactures, imports, sells and/or distributes the PRODUCTS for sale or use in  
4 the State of California, or implies by its conduct that it manufactures, imports, sells and/or distributes  
5 the PRODUCTS for sale or use in the State of California.

6 20. Defendant DICK'S SPORTING GOODS, INC. ("DICK'S SPORTING GOODS") is a  
7 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

8 21. DICK'S SPORTING GOODS imports, sells and/or distributes the VINYL GRIP  
9 PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports, sells  
10 and/or distributes VINYL GRIP PRODUCTS for sale or use in the State of California.

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

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

21 **VENUE AND JURISDICTION**

22 24. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
23 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
24 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful  
25 conduct occurred, and continue to occur, in Alameda County, and/or because DEFENDANTS  
26 conducted, and continue to conduct, business in this county with respect to the VINYL GRIP  
27 PRODUCTS and/or VINYL BAG PRODUCTS.

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

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

11                           **FIRST CAUSE OF ACTION**

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

13           27. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
14 1 through 26, inclusive.

15           28. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
16 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed  
17 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

18           29. Proposition 65 states, "[n]o person in the course of doing business shall knowingly and  
19 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive  
20 toxicity without first giving clear and reasonable warning to such individual . . . ." Health & Safety  
21 Code § 25249.6.

22           30. On or about September 30, 2014, plaintiff's 60 Notice of Violation, together with the  
23 requisite certificate of merit, was provided to IZZO, DICK'S SPORTING GOODS, and certain  
24 public enforcement agencies stating that, as a result of DEFENDANTS' sales of the VINYL GRIP  
25 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of California  
26 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of  
27 the VINYL GRIP PRODUCTS, without the individual purchasers and users first having been  
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1 provided with a "clear and reasonable warning" regarding such toxic exposures, as required by  
2 Proposition 65.

3 31. On or about March 13, 2015, plaintiff's Supplemental 60-Day Notice of Violation,  
4 together with the requisite certificate of merit, was provided to IZZO, DICK'S SPORTING GOODS,  
5 and certain public enforcement agencies stating that, as a result of DEFENDANTS' sales of the  
6 VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS containing the LISTED CHEMICAL,  
7 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL  
8 resulting from their reasonably foreseeable use of the VINYL GRIP PRODUCTS and/or VINYL  
9 BAG PRODUCTS, without the individual purchasers and users first having been provided with a  
10 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

11 32. Plaintiff's 60-Day Notice of Violation dated September 30, 2014, to IZZO, DICK'S  
12 SPORTING GOODS, and plaintiff's Supplemental 60-Day Notice of Violation dated March 13,  
13 2015, to IZZO, DICK'S SPORTING GOODS shall, where appropriate, collectively be referred to  
14 herein as the "Notices."

15 33. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
16 and/or offering of the VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS for sale or use  
17 in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have continued to  
18 occur beyond their receipt of plaintiff's Notices. As such, DEFENDANTS' violations are ongoing  
19 and continuous in nature, and will continue to occur in the future.

20 34. After receiving plaintiff's Notices, the appropriate public enforcement agencies have  
21 not commenced and diligently prosecuted a cause of action against DEFENDANTS under  
22 Proposition 65.

23 35. The VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS manufactured,  
24 imported, sold, and/or distributed for sale or use in California by DEFENDANTS contain the  
25 LISTED CHEMICAL such that they require a "clear and reasonable" warning under Proposition 65.

26 36. DEFENDANTS knew or should have known that the VINYL GRIP PRODUCTS  
27 and/or VINYL BAG PRODUCTS they manufacture, import, distribute, sell, and/or offer for sale or  
28 use in the State of California contain the LISTED CHEMICAL.

1           37. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
2 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during their  
3 reasonably foreseeable use.

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

7           39. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the  
8 VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS expose individuals to the LISTED  
9 CHEMICAL through dermal contact and/or ingestion.

10          40. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the  
11 reasonably foreseeable uses of the VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS  
12 would occur by their deliberate, non-accidental participation in the manufacture, importation,  
13 distribution, sale, and/or offering the VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS  
14 for sale or use to individuals in the State of California.

15          41. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers  
16 and other individuals in the State of California who were or who would become exposed to the  
17 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable  
18 uses of the VINYL GRIP PRODUCTS and/or VINYL BAG PRODUCTS.

19          42. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
20 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
21 contact and/or ingestion resulting from the reasonably foreseeable use of the VINYL GRIP  
22 PRODUCTS and/or VINYL BAG PRODUCTS sold by DEFENDANTS without a "clear and  
23 reasonable warning," have suffered, and continue to suffer, irreparable harm for which they have no  
24 plain, speedy, or adequate remedy at law.

25          43. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-  
26 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each  
27 violation.

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1 44. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)  
2 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

3 **PRAYER FOR RELIEF**

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

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

7 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
8 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the VINYL GRIP  
9 PRODUCTS and/or VINYL BAG PRODUCTS for sale or use in California without first providing a  
10 "clear and reasonable warning" as defined by title 27 of the California Code of Regulations, section  
11 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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

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

14 Dated: June 25, 2015

Respectfully Submitted,

THE CHANLER GROUP

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18 By: 

Carolee S. Paras  
Attorneys for Plaintiff  
JOHN MOORE