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6 JOHN MOORE

ALAMEDA COUNTY  
AUG 19 2016  
CLERK OF THE SUPERIOR COURT  
DANIELA M. GARCIA

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

11  
12 JOHN MOORE,

13 Plaintiff,

14 v.

15 CELEBRITY INTERNATIONAL INC.;  
16 SKIDDERS FOOTWEAR INC.; and DOES  
1-150, inclusive,

17 Defendants.

Case No.

R616828084

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff John Moore (“Moore”)  
3 in the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic  
5 chemical found in and on the footwear sold by defendants in California.

6 2. By this Complaint, Moore seeks to remedy defendants’ continuing failure to warn  
7 California citizens about the risks of exposure to DEHP present in footwear manufactured,  
8 distributed, and/or offered for sale or use by defendants to consumers and other individuals  
9 throughout the State of California.

10 3. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
11 Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), “[n]o person in the course of  
12 doing business shall knowingly and intentionally expose any individual to a chemical known to the  
13 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
14 such individual . . .” Health & Safety Code § 25249.6.

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

19 5. Defendants manufacture, distribute, import, sell, and offer for sale without a health  
20 hazard warning in California, footwear that contains DEHP including, but not limited to, *The*  
21 *Original Skidders Women’s Fashion Flip Flops, Style# AP1304, UPC #8 44924 11559 0*. All such  
22 footwear containing DEHP shall be referred to hereinafter as “PRODUCTS.”

23 6. Defendants’ failure to warn consumers and other individuals in the State of California  
24 of the health hazards associated with exposures to DEHP in conjunction with defendants’ sales of  
25 the PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
26 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
27 § 25249.7(a) & (b)(1).

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1           7.     For defendants' violations of Proposition 65, Moore seeks preliminary and permanent  
2 injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the  
3 required warning regarding the health hazards associated with exposures to DEHP. Health &  
4 Safety Code § 25249.7(a).

5           8.     Pursuant to Health and Safety Code section 25249.7(b), Moore also seeks civil  
6 penalties against defendants for their violations of Proposition 65.

7                               **PARTIES**

8           9.     Moore is a citizen of the State of California who is dedicated to protecting the health  
9 of California citizens through the elimination or reduction of toxic exposures from consumer  
10 products; and he brings this action in the public interest pursuant to Health and Safety Code section  
11 25249.7(d).

12          10.    Defendant CELEBRITY INTERNATIONAL INC. ("CELEBRITY") is a person in  
13 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
14 25249.11.

15          11.    CELEBRITY manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
16 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
17 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

18          12.    Defendant SKIDDERS FOOTWEAR INC. ("SKIDDERS") is a person in the course  
19 of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

20          13.    SKIDDERS manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
21 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
22 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

23          14.    Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person  
24 in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
25 25249.11.  
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1           15.   MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and  
2 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and  
3 manufacture one or more of the PRODUCTS offered for sale or use in the State of California.

4           16.   Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in  
5 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
6 25249.11.

7           17.   DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
8 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in  
9 the State of California.

10          18.   Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the  
11 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
12 25249.11.

13          19.   RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
14 of California.

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

20          21.   CELEBRITY, SKIDDERS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
21 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred  
22 to as "DEFENDANTS."

23                               **VENUE AND JURISDICTION**

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

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

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

13 **FIRST CAUSE OF ACTION**

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

15 25. Moore realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
16 1 through 24, inclusive.

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

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

24 28. On May 26, 2016 a 60-Day Notice of Violation (“Notice”) was provided to  
25 CELEBRITY, SKIDDERS, and certain public enforcement agencies stating that, as a result of  
26 DEFENDANTS’ sales of the PRODUCTS containing DEHP, purchasers and users in the State of  
27 California were being exposed to DEHP resulting from the reasonably foreseeable uses of the  
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1 PRODUCTS, without the individual purchasers and users first having been provided with a “clear  
2 and reasonable warning” regarding the harms associated with such exposures, as required by  
3 Proposition 65.

4 29. DEFENDANTS have engaged in the manufacture, distribution, and offering of the  
5 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and such  
6 violations have continued to occur beyond DEFENDANTS’ receipt of Moore’s Notice. As such,  
7 DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to occur in the  
8 future.

9 30. After receiving the claims asserted in the Notice, the appropriate public enforcement  
10 agencies have failed to commence and diligently prosecute a cause of action against  
11 DEFENDANTS under Proposition 65.

12 31. The PRODUCTS manufactured, distributed, and offered for sale or use in California  
13 by DEFENDANTS contain DEHP, such that they require a “clear and reasonable” warning under  
14 Proposition 65.

15 32. DEFENDANTS knew or should have known that the PRODUCTS they  
16 manufactured, imported, distributed, sold, and/or offered for sale or use in California contained  
17 DEHP.

18 33. DEHP is present in or on the PRODUCTS in such a way as to expose individuals to  
19 DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

20 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
21 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of  
22 Regulations, section 25602(b).

23 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the  
24 PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

25 36. DEFENDANTS intended that exposures to DEHP from the reasonably foreseeable  
26 use of the PRODUCTS would occur by their deliberate, non-accidental participation in the  
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1 manufacture, importation, distribution, sale, and/or offering of the PRODUCTS for sale or use to  
2 consumers and other individuals in the State of California.

3 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and other individuals in the State of California who were or who would become exposed  
5 to DEHP through dermal contact and/or ingestion during the reasonably foreseeable uses of the  
6 PRODUCTS.

7 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
8 directly by California voters, individuals exposed to DEHP through dermal contact and/or ingestion  
9 as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear and  
10 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for  
11 which they have no plain, speedy, or adequate remedy at law.

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

15 40. As a consequence of the above-described acts, Health and Safety Code  
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

### 18 PRAYER FOR RELIEF

19 Wherefore, Moore prays for judgment against DEFENDANTS as follows:

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

23 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily  
24 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the  
25 PRODUCTS for sale or use in California without first providing a “clear and reasonable warning”  
26 in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding  
27 the harms associated with exposure to DEHP;

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3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 et seq.;

4. That the Court grant Moore his reasonable attorneys’ fees and costs of suit; and

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

Dated: August 19, 2016

Respectfully submitted,  
THE CHANLER GROUP

By:   
Ryan C. Oca  
Attorneys for Plaintiff  
John Moore