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Clifford A. Chanler, State Bar No. 135534
Warren M. Klein, State Bar No. 303958
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
E-mail: cliff@chanler.com
E-mail: warren@chanler.com

Attorneys for Plaintiff
JOHN MOORE

ENDORSED
FILED
ALAMEDA COUNTY

SEP 13 2016

CLERK OF SUPERIOR COURT
By Maria Carrera

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

JOHN MOORE,

Plaintiff,

v.

U.S. JACLEAN, INC.; and DOES 1 – 150,
inclusive,

Defendants.

Case No. RG 16830928
**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 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 health hazards caused by exposures to di(2-ethylhexyl) phthalate (“DEHP”), a
5 toxic chemical found in and on the exercise balls sold by Defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle Defendants’ products, about the risks of
9 exposure to DEHP present in and on the exercise balls manufactured, distributed, and offered
10 for sale or use throughout the State of California. Individuals not covered by California’s
11 Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle
12 Defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of DEHP are found in and on the exercise balls that Defendants
14 manufacture, distribute, and offer for sale to consumers throughout the State of California.

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

20 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
21 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
22 subject to the “clear and reasonable warning” requirements of the act one year later on October
23 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
24 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, exercise balls that contain DEHP including, but not limited to,
27 *U.S. Jaclean, Inc. Exercise Ball, USJ-772, UPC #0 45656 00900 7*. All such exercise balls
28 containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

1 sale or use in California.

2 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
3 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
4 and 25249.11.

5 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
6 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
7 retailers for sale or use in the State of California, or each implies by its conduct that it
8 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
9 individuals, businesses, or retailers for sale or use in the State of California.

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

13 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
14 individuals in the State of California.

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

20 20. U.S. JACLEAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
21 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
22 referred to collectively as the “DEFENDANTS.”

23 **VENUE AND JURISDICTION**

24 21. Venue is proper in the Superior Court for the County of Alameda, pursuant to
25 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
26 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
27 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
28

1 and/or because DEFENDANTS conducted, and continue to conduct, business in Alameda with
2 respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

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

17 25. 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
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm.”

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

25 27. On June 14, 2016, Plaintiff served a sixty-day notice of violation, together with
26 the accompanying certificate of merit, on U.S. JACLEAN, the California Attorney General’s
27 Office, and the requisite public enforcement agencies alleging that, as a result of
28 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being

1 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
2 the consumers first receiving a “clear and reasonable warning” regarding the harms associated
3 with exposures to DEHP, as required by Proposition 65.

4 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
5 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
6 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
7 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
8 will continue in the future.

9 29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
10 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
11 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
12 violation.

13 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
14 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
15 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
16 consumers in California are not exempt from the “clear and reasonable” warning requirements
17 of Proposition 65, yet DEFENDANTS provide no warning.

18 31. DEFENDANTS knew or should have known that the PRODUCTS they
19 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

20 32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
21 through dermal contact and/or ingestion during reasonably foreseeable use.

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

25 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
26 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

27 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
28 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the

1 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
2 consumers in California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers in California who have been, or who will be, exposed to DEHP through dermal
5 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

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

27 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
28 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS

1 currently in the chain of commerce in California without a “clear and reasonable warning” as
2 defined by California Code of Regulations title 27, section 25601 et seq.;

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

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

5
6 Dated: September 12, 2016

Respectfully submitted,
THE CHANLER GROUP

7
8 By: 

Warren M. Klein
Attorneys for Plaintiff
JOHN MOORE