

1 Clifford A. Chanler, State Bar No. 135534  
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 Email: ctuttle@chanler.com

10 Attorneys for Plaintiff  
11 JOHN MOORE

**F I L E D**

Superior Court of California  
County of San Francisco

FEB 17 2017

CLERK OF THE COURT

BY: Arline Ramon  
Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE,

16 Plaintiff,

17 v.

18 CALENDAR HOLDINGS LLC.; and DOES  
19 1-150, inclusive,

20 Defendants.

Case No. **CGC-17-557161**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 et seq.)

21  
22  
23  
24  
25  
26  
27  
28  
**COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**

1 NATURE OF THE ACTION

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

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

14 3. Detectable levels of DEHP are found in and on the suction cups that defendants  
15 manufacture, distribute, and offer for sale to consumers throughout the State of California.

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

21 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
22 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became  
23 subject to the “clear and reasonable warning” requirements of the act one year later on October  
24 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
25 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, products with suction cups that contain DEHP including, but not  
28

1 limited to, *50 Fifty Ducky Divers (Suction Cup Component)*, UPC #8 49788 00300 7. All such  
2 suction cups containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health  
4 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the  
5 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
7 § 25249.7(a) & (b)(1).

8 8. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with  
10 the required warning regarding the health hazards associated with exposures to DEHP. Health  
11 & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil  
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to  
16 protecting the health of California citizens through the elimination or reduction of toxic  
17 exposures from consumer products; and brings this action in the public interest pursuant to  
18 Health and Safety Code section 25249.7(d).

19 11. Defendant CALENDAR HOLDINGS LLC (“CALENDAR HOLDINGS”) is a  
20 person in the course of doing business within the meaning of Health and Safety Code sections  
21 25249.6 and 25249.11.

22 12. CALENDAR HOLDINGS manufactures, imports, distributes, sells, and/or offers  
23 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
24 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
25 State of California.

26 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
27 person in the course of doing business within the meaning of Health and Safety Code sections  
28 25249.6 and 25249.11.

1 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
2 assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design,  
3 assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in  
4 California.

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

8 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
9 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
10 retailers for sale or use in the State of California, or imply by their conduct that they distribute,  
11 exchange, transfer, process, and transport one or more of the PRODUCTS to individuals,  
12 businesses, or retailers for sale or use in the State of California.

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

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

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

23 20. CALENDAR HOLDINGS, MANUFACTURER DEFENDANTS,  
24 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where  
25 appropriate, be referred to collectively as the “DEFENDANTS.”

26 **VENUE AND JURISDICTION**

27 21. Venue is proper in the Superior Court for the County of San Francisco pursuant to  
28 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of

1 competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because  
2 one or more instances of wrongful conduct occurred, and continue to occur, in this county,  
3 and/or because DEFENDANTS conducted, and continue to conduct business in San Francisco  
4 with 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 DEFENDANTS are each a person, firm,  
11 corporation or association that is a citizen of the State of California, has sufficient minimum  
12 contacts in the State of California, and/or otherwise purposefully avails itself of the California  
13 market. 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.

27 27. On December 6, 2016, Plaintiff served a sixty-day notice of violation, together  
28 with the accompanying certificate of merit, on CALENDAR HOLDINGS, the California

1 Attorney General's Office, and the requisite public enforcement agencies alleging that, as a  
2 result of DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are  
3 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,  
4 without the consumers first receiving a "clear and reasonable warning" regarding the harms  
5 associated with exposures to DEHP, as required by Proposition 65.

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

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

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

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

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

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

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


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 Plaintiff 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: February 16, 2017

Respectfully submitted,  
THE CHANLER GROUP

By:   
\_\_\_\_\_  
Christopher F. Tuttle  
Attorneys for Plaintiff  
JOHN MOORE